

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.3810 OF 1999

and

W.M.P.Nos.5449 of 1999 and 32360 of 2001

N.Selvam ..Petitioner

-Vs-

1.The Deputy Registrar of Cooperative
Societies, Kasukarar Street
Mannargudi
Tiruvarur District

2.Z.C.66 Singalanthi Primary Agriculture
Cooperative Bank Ltd., rep. by its
President, Muthupettai Road
Thiruthuraipoondi Post
Tiruvarur District

3.The Special Officer-C-65 Kokkaladi Primary
Agriculture Co-operative Bank
Kokkalady, Kamani 614 711
Thiruthuraipoondi Taluk

4.Z.C.66, Singalanthi Primary Agriculture
Cooperative Bank Limited,
Thiruthuraipoondi 614 713 Respondents.
(RR 3 and 4 impleaded as per order
of Court dated 3.10.2001 in W.M.P.
No.20221/2001)

Petition filed under Article 226 of the Constitution of India for the
issue of writ of Certiorarified Mandamus as stated therein.

For petitioner :Ms.S.Jothivani

For respondent No.2: Mr.S.T.S.Murthi

:ORDER

Heard the learned counsel appearing for the parties.

2. In this writ petition, the petitioner has prayed for calling for the entire records of the 1st respondent's proceedings made in Na.Ka. No.1612/95 Kuvisa dated 25.12.1998, quash the same and for direction to the respondent to approve the Petitioner's Post as Secretary in the 2nd Respondent Bank.

3. The petitioner was appointed as a Salesman in Tamil Nadu Civil Supplies and Consumer Corporation's Fair Price shop in 1979. Subsequently, the fair price shops were taken over by different Co-operative Societies and accordingly the petitioner was working as Salesman in Kokkaladi Primary Agriculture Cooperative Bank Ltd., from 16.11.1989. Subsequently, he was promoted as a clerk. It is stated that thereafter, he was sent on deputation to Singalanthi Primary Agriculture Cooperative Bank Ltd. While he was so working, the Secretary of the said Singalanthi Primary Agriculture Cooperative Bank Ltd., the second respondent expired and the petitioner was made as incharge Secretary. At this stage, an order Na.Ka.No.1612/Kuvisa dated 25.12.98 was passed reverting the petitioner to his parent post in Kokkaladi Primary Agriculture Cooperative Bank Ltd. Aggrieved by the said order, the petitioner had filed W.P.No.18553/96. The said writ petition was dismissed by order dated 11.12.96 holding that the petitioner had no right to continue in the subsequent post and there was no infirmity in the order of reversion. After disposal of the aforesaid writ petition, it appears a resolution was passed by the petitioner's parent bank declaring that they had no objection if the services of the petitioner are regularised in the present second respondent bank to which the petitioner had been deputed. The petitioner had made several representations to the second respondent Bank and it appears that the second respondent also passed a resolution on 21.11.97 recommending that the petitioner may be absorbed under the second respondent bank. However, subsequently, by order dated 25.12.98, the second respondent has been directed to relieve the petitioner and to send the petitioner back to his parent bank namely Kokkaladi Primary Agriculture Cooperative Bank Limited. This order has been challenged in the present writ petition.

4. The learned counsel appearing for the second respondent has raised a preliminary objection regarding the maintainability of the writ petition on the ground that the petitioner has suppressed about the dismissal of the earlier writ petition. A perusal of the affidavit filed in support of the present writ petition would show that there is no whisper about the earlier order passed by this Court in W.P.No.18553 /96.

5. Law is well settled that a person who seeks equitable jurisdiction of the High Court under Article 226 of The Constitution of India is required to come to the Court with clean hands and is not entitled to suppress any material particular.

6. In the present case, it appears that the order of reversion of the petitioner to his parent bank which had been passed in the year 1996 had been subsequently challenged and the writ petition has been dismissed. It is, of course true that after dismissal of the aforesaid writ petition, the parent bank had passed a resolution stating that it has got no objection if the

petitioner is regularly absorbed under the present second respondent bank and there has been a similar resolution by the second respondent bank. Yet, it was the duty of the petitioner to bring all facts to the notice of the Court by disclosing about the dismissal of the earlier W.P.No.18553/1996 which had been filed for the very same purpose. This suppression of material fact on the part of the bank is sufficient to refuse the relief to the petitioner. But, even if the aforesaid ground for dismissal of the writ petitioner is ignored, on merit also, I do not find any thing to interfere with the impugned order. Admittedly, the petitioner had been absorbed in Kokkaladi Primary Agricultural Co-operative Bank Limited and he had come to the present second respondent bank only on deputation for a period of three years. Even though the order of reversion is confirmed by this Court, the subsequent order which has been passed appears to be a consequential order. It is true that the parent bank had passed a resolution that it has no objection if the petitioner is regularly absorbed under the second respondent bank and the second respondent has also passed a similar resolution. However, since such resolution has not been accepted the petitioner cannot claim that he has got right.

7.The learned counsel for the petitioner stated that the present impugned order is an order of reversion and the petitioner would be reverted from the post of Secretary to that of clerk. Even this submission does not appear to be justified in view of the fact that the petitioner was never appointed as Secretary on regular basis, but he was allowed to remain in charge as Secretary in view of the demise of the earlier Secretary. It cannot be stated that the present order amounts to an order of reversion.

8.The learned counsel appearing for the petitioner also relied upon rule 149 (2) proviso (ii) and contended that the petitioner should be allowed to continue in the present second respondent bank.

9.On going through the aforesaid provision, I do not find any thing which is applicable to the case of the petitioner. Rule 149 (2) proviso (ii) relates to absorption of surplus employees for the Cooperative society. By no stretch of imagination it can be said that the petitioner is surplus. There is no material that the petitioner had been found to be surplus employee of the parent bank. Therefore, the aforesaid proviso is not applicable.

10.For the aforesaid reasons, I do not find any merit in this writ petition and the same is dismissed. No costs. Consequently, W.M.P.Nos.5447/1999 and W.P.M.P.No.32360/2001 are disposed of.

11.However, it is made clear that if the petitioner is found to be a surplus employee in the parent bank, namely, Kokkaladi Primary Agriculture Co-operative Bank Ltd., appropriate steps shall be taken by the respondent No.1 to absorb the petitioner in another branch of the bank. It is also made clear if the petitioner is eligible to be considered for being appointed as Secretary, the case of the petitioner should be considered in accordance with law.

Index: Yes

Internet: Yes

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To

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