

A. Senthilkumar Vs. the Deputy Registrar of Co-operative Societies, Sivaji Nagar, Thanjavur - 9 and Two Others

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Court : Chennai

Decided On : Jul-28-2000

Reported in : 2000(4)CTC485

Judge : P.D. Dinakaran, J.

Acts : Constitution of India, Article 226; Tamil Nadu Co-operative Societies Rules -- Sections 74 and 75 -- Rule 149(2)

Appeal No. : W.P.No. 12719 of 2000

Appellant : A. Senthilkumar

Respondent : The Deputy Registrar of Co-operative Societies, Sivaji Nagar, Thanjavur - 9 and Two Others

Advocate for Def. : Mr. S. Rajendran, Government Adv.

Advocate for Pet/Ap. : Mr. K.V. Ananthakrishnan, Adv.

Judgement :

ORDER

1. The petitioner seeks a writ of Certiorari calling for the records relating to the impugned proceedings Na.Ka.No.3055/99 Sa.Ba. dated 23.6.2000 of the first

respondent and quash the same as illegal and against law.

2. Rule 149(2) of the Tamil Nadu Co-operative Societies Rules, 1988 reads as follows:

'No appointment by direct recruitment to any post shall be made except by calling for a list of eligible candidates from the Employment Exchange and also giving due publicity by means of announcement in the notice board of the Society and also of the affiliated societies inviting application from the eligible employees of such societies. Where the Employment Exchange issues a non-availability certificate, the society shall invite applications by giving advertisement in more than one daily newspapers in which one should be in regional language having wide circulation throughout the State:

Provided that the above stipulation shall not apply-

(i) to the appointment made on compassionate grounds;

(ii) for the absorption of surplus employees of other Co-Operative Societies;

(iii) to the posts for which a Recruitment Bureau has been constituted under Section 74 of the Act or in respect of which a common cadre of service has been constituted under Section 75 of the Act.

3. Admittedly, the petitioner's case does not fall under any of the exceptions mentioned in the proviso to Rule 149(2). Since the very appointment of the petitioner is contrary to Rule 149(2) referred to above, the first respondent by their proceedings dated 23.6.2000 terminated the service of the petitioner. Hence, the above writ petition.

4. The learned counsel for the petitioner contends that the petitioner was not given any notice before issuing the order of termination.

5. In my considered opinion, in the matter of illegal appointment, which is contrary to statutory provisions, viz., Rule 149(2), no opportunity is required to be given to the petitioner, as no estoppel could be claimed against the statute. Hence, the writ petition fails and the same is dismissed. No costs. Consequently, WMP No. 18321

and 18322 of 2000 are also dismissed.

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