

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.12.2013

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.19330 of 2012

and

M.P.No.1 of 2012

Ezhil Bharathi

... Petitioner

Vs.

1.The Secretary to the Government Cooperation,
Food and Consumer Protection Department,
Secretariat, Chennai - 600 009.

2.The Registrar of Cooperative Societies,
Chennai - 600 010.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the Second Respondent to include the Petitioner's name in the panel for promotion to the post of Co-operative Sub Registrar as on 01.05.1994 in the appropriate place and to promote the petitioner and as such, sanction all consequential benefits and to consequentially direct the 1st Respondent to include her name in the appropriate place in the ensuing promotion panel for promotion to the post of Deputy Registrar of Co-operative Societies.

For Petitioner : Mr.M.Ravi
For Respondent 1 : Mr.V.Subbiah
Special Government Pleader
For 2nd Respondent : Mrs.P.Rajalakshmi,
Government Advocate

ORDER

The Petitioner has preferred the instant Writ of Mandamus praying for issuance of an order by this Court in directing the 2nd Respondent/Registrar of Cooperative Societies, Chennai to include her name in the panel for promotion to the post of Co-operative Sub Registrar as on 01.05.1994 in the appropriate place and to promote her, as such to sanction all consequential benefits. Further, she has sought for passing of an order by this Court in directing the 1st Respondent to include her name in the appropriate place in the ensuing promotion panel for promotion to the post of Deputy Registrar of Co-operative Societies.

2.Writ Petition Facts:

(i)According to the Petitioner, she was initially appointed as a Junior Assistant on compassionate ground on 23.10.1982. Later, she was promoted as Senior Inspector of Co-operative Societies in the year 1989.

(ii)When she was on overstay of her leave, she was charge sheeted on the ground that he had committed unauthorised overstay, as per charge memo dated 25.02.1992 in Letter No.Na.Ka.299/92A. In the meanwhile, she joined service by submitting his leave letter, medical and fitness certificate on 31.03.1990, she was permitted to resume duty.

(iii)She was in continuous service as Senior Inspector of Co-operative Societies. She received a show cause notice in the second week of March 1995. She filed O.A.No.980 of 1995 before the Tamil Nadu Administrative Tribunal and on 23.03.1995 obtained a stay of the Charge Memo dated 25.02.1992.

(iv)However, in the panel for promotion to the post of Co-operative Sub Registrar as on 01.05.1994 her name was not included (even though other eligible batch mates were included). She submitted a representation to the authorities citing G.O.Ms.No.368 P & AR dated 18.10.1993 and requesting them to include her name in the panel as she was eligible and qualified.

(v)Further, she received a letter from the Registrar of 2nd Respondent/Registrar of Co-operative Societies dated 05.04.1995 which mentioned that her name was considered for inclusion in the said panel. But, it was deferred as the proceedings before the Tribunal were pending. The charge memo was quashed by the Tribunal and the Tribunal granted liberty to the Department to take action afresh against her.

(vi)On 30.04.2001, the Joint Registrar of Co-operative Societies continued the proceedings in pursuance of the said charge memo dated 25.02.1992 and passed final orders without initiating fresh proceedings which is contrary to the order of the Tribunal in O.A.No.980 of 1995. The Joint Registrar of Co-operative Societies passed final orders of 'stoppage of increment for a period of three months without cumulative effect'.

(vii)The Petitioner filed an 'Appeal' to the 2nd Respondent/Registrar of Co-operative Societies on 18.06.2001 against the order of the Joint Registrar of Co-operative Societies and submitted various reminders and representations to the Registrar of Co-operative Societies which all failed to elicit any response.

(viii) On 31.01.2008, the 2nd Respondent/Registrar of Co-operative Societies, in Rc.No. 1484/2001/EM1, passed an order on her appeal, wherein the order of the Joint Registrar was confirmed and a request for withdrawal of punishment and consequential grant of empanelment and promotion was rejected.

(ix) Later, she made a representation dated 07.02.2011 to the 1st Respondent against the order of the 2nd Respondent. The 1st Respondent/Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai, through his letter No.3568/CH1/2011-7, dated 11.01.2012, quashed the order passed by the 2nd Respondent since the charges themselves were not legally subsisting when the Joint Registrar passed the punishment order and directed the 2nd Respondent to take further action to include her name in Co-operative Sub Registrar's panel as on 01.05.1994 as per the instructions issued in G.O.Ms.No.368 P & AR [S] Department dated 18.10.1993 and in the Government Letter [P&AR[S] Department dated 17.05.1995.

(x) That apart, the 1st Respondent, in response to the proceedings dated 28.05.2012 (addressed to the 2nd Respondent), mentioned that as the order of punishment dated 30.04.2001, having been set aside and there is no fresh charge memo issued and has issued a categorical direction to the 2nd Respondent to initiate afresh actions against the Petitioner and reiterated the direction to take further action to include her name in the Co-operative Sub Registrar's Panel as on 01.05.1994 as per G.O.Ms.No.368 P & AR [S] Department dated 18.10.1993 and Government Lr.No.90586/94-2, P & AR [S] Department dated 17.05.1995.

3.The Learned Counsel for the Petitioner contends that till date the Petitioner has not received any communication from the Respondents and later her name was not included in the panel as instructed by the 1st Respondent in the letters dated 11.01.2012 and 28.05.2012 respectively.

4.The Learned Counsel for the Petitioner urges before this Court that since no charge was framed against the Petitioner at the time of empanelment, she is eligible to be included in the panel. But despite the direction of the 1st Respondent to include Petitioner's name in the panel for promotion as Co-operative Sub Registrar as on 01.05.1994, no action was taken till date.

5.According to the Learned Counsel for the Petitioner, the non-inclusion of the Petitioner's name in the panel for promotion to Co-operative Sub Registrar as on 01.05.1994 resulted in grave prejudice to the Petitioner and her career and that too when her juniors were promoted ahead of her and she was made to suffer for the actions of the Respondents.

6. At this stage, this Court pertinently points out that in the batch of Original Application No.630 of 2000 etc. batch (in which the Petitioner's case is O.A.No.980), the Tamil Nadu Administrative Tribunal, Chennai, on 6th day of July 2000, has, in paragraph Nos.2 and 3, inter alia, passed the following order:

"2. Though the impugned orders are set aside in these cases, the authorities are at liberty to proceed against the applicants for their failure to resume duty after expiry of leave, in accordance with Rules 8 & 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As and when such enquiry is conducted, the authorities should not be influenced by the earlier orders of removal from service passed by them and the provisions contained in F.R.18(3). They must consider the case afresh, after giving sufficient opportunity to the applicants to lead further evidence, if necessary.

3. We make it clear that depending upon the nature, circumstances, duration of the pendency of the cases before this Tribunal, the age of the applicants and other relevant circumstances, it is also open to the concerned authorities to decide, whether further proceedings against any, some or all of the applicants are allowed and the punishment orders are set aside. However, the matters are remitted back to the concerned authorities for fresh action, if necessary, without reference to the orders already, passed and the provisions contained in F.R. 18(3)."

7. It comes to be known that the Joint Registrar of Co-operative Societies has passed the order dated 30.04.2001 in respect of the Petitioner on the basis of earlier charge memo and former proceedings conducted prior to the Tribunal's order and ultimately passed an order of punishment by imposing next stoppage of increment for a period of three months without cumulative effect (excluding the period spent on leave). Thereupon she projected a representation dated 18.06.2001 addressed to the Registrar praying for inclusion of her name as per Government Rule for the year 1995 and to grant her promotion and other benefits. In the meanwhile, she made a request that during the present in 2001 Panel, her name also to be included for promotion. Also that, the Petitioner addressed another communication dated 23.05.2007 addressed to the Registrar of Co-operative Societies (through proper channel) wherein she made a request to consider her name in the panel for the post of Co-operative Sub Registrar as on 01.05.1994 for the promotion of Deputy Registrar of Co-operative Societies etc.

8.It is to be noted that the 2nd Respondent/Registrar of Co-operative Societies through proceedings dated 31.07.2008 in Rc.1484/2007/EM.1 has stated hereunder:

"In the representation dated 25.6.2007, Tmt. B.Bharathi, Co-operative Sub Registrar has requested to include her name in the panel of Senior Inspectors fit for promotion as Co-operative Sub Registrar as on 1.5.1994. Her request has been examined with reference on the orders issued in O.A.No.4634/93, dated 23.12.1994. In which the Hon'ble Tamil Nadu Administrative Tribunal has ordered that the stay of a charge memo or proceedings there under or a direction not to pass final orders does not have the effect of cancelling the charge memo. In tune with the orders of the Supreme Court in Union of India vs. Tejindar Singh (1996 (24) ATC 537) the Tamil Nadu Administrative Tribunal has directed that consideration for promotion during pendency of proceedings or following a decision taken to initiate such proceedings any interim directions in regard to the proceedings cannot have the effect of permitting consideration of such promotion without reference to the pending proceedings. Any interim directions in regard to the Charge memo and proceedings thereunder cannot have the result of permitting consideration of the individual for promotion.

2.Consequent on the above direction of the Tamil Nadu Administrative Tribunal, the Government in their letter No.90586/94-2, Personnel and Administrative Reforms (S) Department, dated 17.5.1995 have issued the following amendment to G.O.Ms.No.368, Personnel and Administrative Reforms (S) Department, dated 18.10.1993. In the said G.O. for paragraph II (iv) (4) the following shall be substituted.

"Wherever the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules against Government Employees are merely stayed by a Court/Tribunal, their cases shall be deferred till the proceedings are concluded unless a contrary order is passed by the Court/Tribunal and it is decided not to challenge the same. If on the other hand the Court/Tribunal quashes the same charge memo, then, the name of the Government employee concerned should be considered for inclusion in

the panel for appointment to the higher post by promotion/recruitment by transfer if he is otherwise qualified".

3. In view of the above amendment, Tmt.B.Bharathi is not eligible for inclusion in the panel of Senior Inspectors fit for promotion as Co-operative Sub Registrars as on 1.5.1994 due to the pendency of 17(b) charges.

4. Similarly, Tmt.B. Bharathi in her representation dated 28.3.2008 she has requested to withdraw the punishment imposed by the Joint Registrar of Co-operative Societies, Chennai region in his memo dated 30.4.2001. In this connection, it is informed that as per the direction of the Hon'ble Tamil Nadu Administrative Tribunal dated 6.7.2000, the charge memo issued was considered afresh for disposal and a punishment of stoppage of increment for 3 months without cumulative effect was inflicted in the proceedings Rc.33681/99 ml, dated 30.4.2001 of Joint Registrar of Co-operative Societies, Chennai Region. Hence, her request for withdrawal of punishment cannot be complied with."

9. Being dissatisfied with the proceedings dated 31.07.2008 of the Registrar of Co-operative Societies, Chennai, the Petitioner preferred a representation addressed to the 1st Respondent dated 07.02.2011 and made a request to consider her grievances sympathetically in respect of the following four points:

"1. During the drawal of panel for the post of CSR, my status quo was not maintained for the year 1-5-1994. My name should have been considered since the charges are pending on the date of drawal. (Court had stayed the charges framed under Rule 17 (b)).

2. Neither the department not to vacate the stay order nor given promotion as CSR post in spite of the stay order during the time. (My status quo was not maintained)

3. Even though the TAT has ordered to set aside the charge memo (Na.Ka.299/92/A, dated 25.02.1992) and further ordered that it is open to the concerned authorities to decide, "whether further proceedings against any (or) some of the applicants are necessary at all." The department has not followed the TAT directions and awarded me a punishment of 3 months increment and without cumulative effect based on the old 17(b) charges (Na.Ka.299/92/A, dated 25.02.1992) which had

already been set aside by the TAT. As such the order passed in the departmental enquiry found to be wrong and against the order of TAT.

4. For not having considered my name in the panel of CSR during the year 1994 in the light of the TAT order and as per the panel instructions I had been forced to be far below to my junior."

10. The 1st Respondent/Secretary to Government, in Letter No. 3568/CH1/2011-7 dated 11.01.2012 (based on the representation of the Petitioner dated 07.02.2011), has, in paragraph Nos. 2 and 3, passed the following order:

"2. I am also state that by virtue of Tamil Nadu Administrative Tribunal order dated: 6.7.2000, the applications are allowed and the punishment orders are set aside. The application in the instant case is call for the records pertaining to the orders passed by the respondent (i.e) Deputy Registrar of Co-operative Societies (Housing), Chennai Region, in his proceedings Na.Ka.No.299/92/A, dated 25.2.1992, wherein the charges were framed under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against Tmt.B.Bharathi for staying away from duty without any leave application from 1.7.1990 and set aside the same. By virtue of the aforesaid orders, the charges framed against the petitioner is set aside as prayed for in the said application filed by the petitioner. As such the charges framed against the individual in Na.Ka.No.299/92/A, dated 25.2.1992 did not subsist legally. It is seen that the Joint Registrar of Co-operative Societies, Madras has continued the said proceedings dated 25.2.1992 and passed final orders on 30.4.2001, without initiating a fresh charge against the individual after the disposal of the said O.A.No.980/95 of the Tamil Nadu Administrative Tribunal. The said action of the Joint Registrar of Co-operative Societies is contrary of the orders passed by the Tamil Nadu Administrative Tribunal in the said O.A. Further, Tamil Nadu Administrative Tribunal has remitted back the matters to the concerned authorities for fresh action. The term "fresh action" is significant. By virtue of the aforesaid Tamil Nadu Administrative Tribunal orders action should have been initiated afresh against the applicant, if the authority so desires. Hence, the orders passed on 30.4.2001 based on the charge memo already issued is not in

consonance with the aforesaid Tribunal order.

3.Hence, I am directed to request you to initiate afresh action against Tmt.B. Bharathi, Cooperative Sub Registrar (then Senior Inspector of Co-operative Societies) and to take further action to include her name in the Cooperative Sub Registrar's panel as on 1.5.1994 as per the instructions issued in G.O.(Ms) No.368, Personnel and Administrative Reforms (S) Department, dated 18.10.1993 and in the Government letter No.90586/94-2, Personnel and Administrative Reforms (S) Department, dated 17.5.1995."

11.At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in State of Mysore V. C.R.Seshadri and others, AIR 1974 SC 460, it is held that 'In our Constitutional scheme a broad three fold division exists. The power to promote an officer belongs to the Executive and the Judicial Power may control or review Government action but cannot extend to acting as if it were the Executive. The Court may issue directions but leave it to the Executive to carry it out. The Judiciary cannot promote or demote officials but may demolish a bad order of Government or order reconsideration on correct principles'.

12.This Court aptly points out the decision of the Hon'ble Supreme Court in Life Insurance Corporation of India and others V. Jagmohan Sharma and others, 1998 9 SCC 219, wherein it is held that 'Where a case is made out that Juniors have been promoted while the Petitioner has been denied, the appropriate relief to be granted is not a direction to promote the Petitioner but a direction to consider his case for promotion from the date of promotion of his Juniors on the same criteria on which Juniors were promoted'.

13.From the aforesaid letter No.3568/CH1/11-7, dated 11.01.2012 of the 1st Respondent addressed to the 2nd Respondent, it is clear that the 1st Respondent made a categorical mention that by virtue of the O.A.No.980/95 Tamil Nadu Administrative Tribunal Orders action should have been initiated afresh against the Applicant (Writ Petitioner), if the authority so desires. Hence, the orders passed on 30.04.2001 based on the charge memo already issued is not in consonance with the aforesaid Tribunal Order and further directed to request the 2nd Respondent to initiate fresh action against the Petitioner (then Senior Inspector of Co-operative Societies) and to take further action to include her name in the Co-operative Sub Registrar's Panel as on 01.05.1994 as per the instructions issued in G.O.Ms.No.368 P & AR (S) Department, dated 18.10.1993 and in the Government Letter No.90586/94-2, dated 17.05.1995.

14.It appears that no fresh action against the Petitioner has been initiated by the authorities concerned. As a matter of fact, the 1st Respondent, in the proceedings in Letter No.3568/CH1/2011-7 dated 11.1.2012, has clearly held that the orders passed on 30.4.2001 by the Joint Registrar of Co-operative Societies, Chennai Region (based on the charge memo already issued) were not in consonance with the aforesaid Tribunal order. Therefore, the said order dated 30.04.2001 passed by the Joint Registrar of Co-operative Societies is considered to be a non est, in the eye of law.

15.As a logical corollary, the order dated 30.04.2001 passed by the Joint Registrar of Co-operative Societies stands erased in the eye of Law. When the punishment of stoppage of increment for three months without cumulative effect by virtue of the order dated 30.04.2001 passed by the Joint Registrar is not there in the eye of law, then, it is to be construed that the Petitioner has a clean slate and as such, she is rightfully entitled to get her name included in the Co-operative Sub Registrar's Panel as on 01.05.1994 in terms of the instructions issued in G.O.Ms.No.368 P & AR (S) Department dated 18.10.1993 and in the Government letter No.90586/94-2, Personnel and Administrative Reforms (S) Department, dated 17.05.1995. Viewed in that perspective, the Writ Petition succeeds.

16.In the result, the Writ Petition is allowed. Consequently, on the peculiar facts and circumstances of the case, the 2nd Respondent is hereby directed to implement the orders issued by the 1st Respondent to include the name of the Petitioner in the Panel for promotion to the post of Co-operative Sub Registrar as on 01.05.1994 (subject to eligibility and suitability), at the appropriate place and to confer all consequential attendant monetary benefits thereto and consequently to consider the case of the Petitioner in regard to the inclusion of her name in the promotion panel to the post of Deputy Registrar of Co-operative Societies (Subject to suitability and eligibility) and to pass a reasoned speaking order within a period of six weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

Sgl

To

1.The Secretary to the Government Cooperation,
Food and Consumer Protection Department,
Secretariat, Chennai - 600 009.

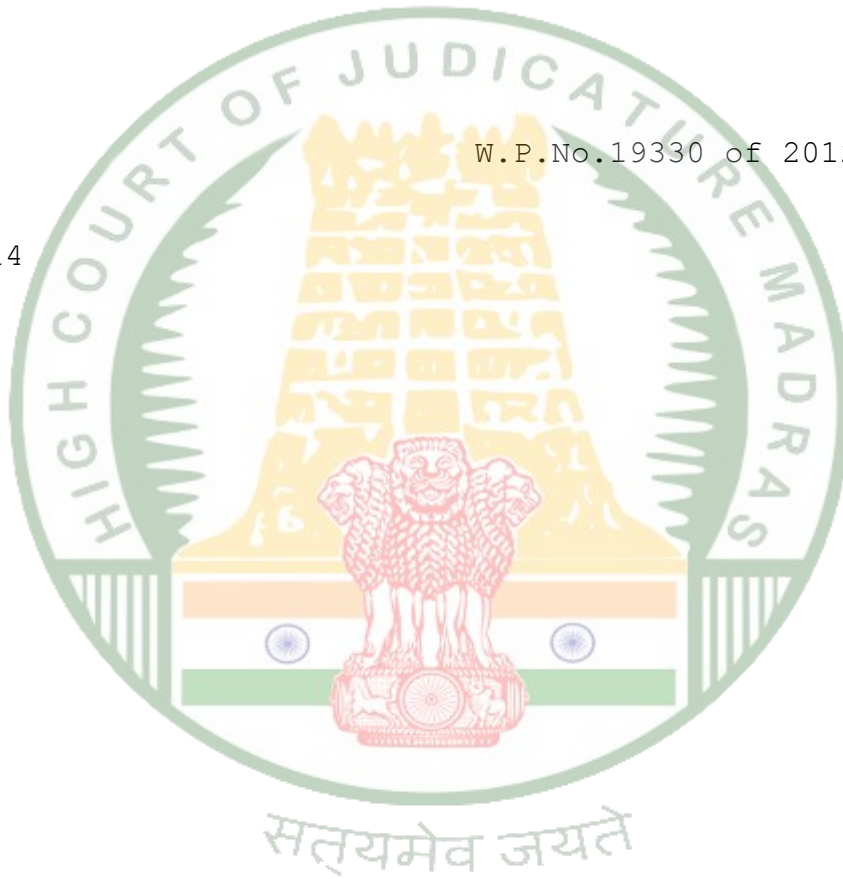
2.The Registrar of Cooperative Societies,
Chennai - 600 010.

1 cc to Govt Pleader.Sr.66511

2ccs to Mr.M.Ravi,Advocate, Sr.66472,66503

W.P.No.19330 of 2012

sai (CO)
GKG/20.1.14



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