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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08- 06 - 2016

CORAM:

THE HONOURABLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) No. 3857 of 2016
and
WMP (MD) Nos. 3462 and 3463 of 2016

J. Anbalagan

.. Petitioner

vs.

1. The Registrar of Cooperative Societies
Kilpauk, Chennai
2. The Managing Director
The Central Co-operative Bank Ltd.
Kumbakonam
Thanjavur

3. K. Dravidaselvan .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned orders passed by the second respondent in his proceedings in Na.Ka. No. 2899/2004 A1 dated 30.11.2015 and the consequent proceedings of the second respondent passed in Na. Ka. No. 03/2016 A1 dated 08.02.2016 and quash the same as illegal and consequently direct the second respondent to promote the petitioner to the post of General Manager of the respondent Bank within stipulated time as may be fixed by this Court.

For Petitioner	: Mr. T.A. Ebenezer
For R 1	: Mr. T.R. Janarthanam, AGP
For R 2	: Mr. D. Shanmugaraja Sethupathi
For R 3	: Mr. V. Karunakaran

O R D E R

Challenging the proceedings of the second respondent / Managing Director, Central Co-operative Bank Ltd., Kumbakonam, dated 30.11.2015, wherein and by which, the third respondent was placed in seniority No. 1 and the consequent proceedings promoting the third respondent to the post of General Manager, the petitioner has filed the instant Writ Petition. By this Writ



Petition, the petitioner has also sought for direction to the second respondent to promote him as General Manager of the respondent Bank.

2. The claim of the petitioner, who was appointed as Manager in the second respondent Bank on 11.6.1990 and subsequently promoted to the post of Assistant General Manager on 04.8.2008, is that he was No. 1 position in the seniority list published right from the year 1992 and as on 01.4.2012 for the promotion of General Manager from the feeder category of Assistant General Manager. It is the case of the petitioner that though he, being the senior most person in the seniority list, was the eligible person to be appointed as General Manager, which post fell vacant from 01.6.2013, by promotion, the same remained vacant and hence, he submitted a representation on 20.4.2013 and 03.8.2013 to promote him as General Manager. But the second respondent issued proceedings in Na.Ka.No.389/2013 A1 dated 26.02.2014 informing that the promotion could not be considered in view of the case pending before the Court at the instance of the third respondent. Challenging the said proceedings, the petitioner filed Writ Petition in W.P. No. 4870 of 2014.

3. The grievance of the petitioner is that pending the Writ Petition filed by him, the second respondent issued orders placing the third respondent to officiate in the cadre post of General Manager as in-charge in the second respondent Bank as against which he filed petition before this Court in W.P.No.2266 of 2015 and the same was disposed of by this Court observing that the third respondent was only placed in additional charge and not promoted to the post of General Manager. While so, according to the petitioner, the second respondent issued proceedings in Na.Ka.No.2899/2004 A1 dated 30.11.2015 placing the third respondent in seniority No.1 and allotting employment Code No. 39 and consequently by issuing proceedings in Na.Ka.No.03/2016 A1 dated 08.02.2016 promoting the third respondent to the post of General Manager, which are impugned in this Writ Petition.

4. Resisting the claim made by the petitioner, the second respondent filed a counter affidavit stating that the Writ Petition filed against the second respondent, which is a Co-operative Bank is not maintainable. It is further stated that the selection was made on the basis of the recommendations of the Selection Committee and the merit list in accordance with Rule 151 of the Tamil Nadu Co-operative Societies Rules. It is also the submission of the second respondent that Rule 149 of the Rules and the Special By-law of the Bank prescribes 3 years of "satisfactory service" in the feeder category as eligibility for promotion to



higher category besides merit and ability. According to the second respondent, since disciplinary proceeding is pending against the petitioner, he cannot be considered for the promotional post of General Manager.

5. The third respondent, who claims to have been appointed under the Open Competition category, submitted that after publication of seniority list in the year 2010, he gave representation to rectify the mistake and revise the seniority list as per the original select list by following communal rotation in the roster. It is also stated that since the same was not revised, he filed Writ Petition before this Court and after filing the same, the official respondent rectified the mistake and revised the seniority list by adopting communal rotation as directed by the first respondent vide its letter dated 21.9.2015. Therefore, according to the third respondent, the revised seniority list is in consonance with the rule and Government Order.

6. The main contention of the learned counsel appearing for the petitioner is that seniority list cannot be prepared on the basis of communal roster prepared for the purpose of appointment.

7. This contention is only to be rejected in view of Rule 35 (a) of the Tamil Nadu State and Subordinate Service Rules which contemplates that the seniority of a person in a service, class or category or grade shall be determined by the rank obtained by him in the list of approved candidates drawn by the appointing authority subject to the rule of reservation where it applies. In the instant case, the revised seniority list prepared by the second respondent is in accordance with Rule 35(a) of the Tamil Nadu State and Subordinate Service Rules.

8. Admittedly, the Kumbakonam Central Co-operative Bank Limited, which is registered under the Tamil Nadu Co-operative Societies Act and the Rules made thereunder, is having registered By-laws in accordance with the provisions of the Tamil Nadu Co-operative Societies Act and Rules. It is also not in dispute that the service condition of the employees will be in accordance with the Special By-law, the relevant provisions of the Act and Rules.

9. At the outset, it is to be stated that the instant Writ Petition is liable to be dismissed in view of the Larger Bench (five Judges) decision of this Court in **K. Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal [2006 (4) CTC 689]** that the Writ Petition against the Co-operative Society is not maintainable.



10. Even going by merits, it is seen that the petitioner has challenged the proceedings dated 30.11.2015 issued by the second respondent wherein and by which the seniority list was revised and the consequential proceedings dated 08.02.2016 promoting the third respondent as General Manager on the basis of the revised seniority list.

11. From the materials available on record, it is seen that the second respondent Bank initiated recruitment process to fill up the existing 4 vacancies in the cadre of Manager to be appointed and the vacancy was notified to the District Employment Exchange and after the sponsoring of eligible candidates by the Employment Office as contemplated under Rule 149 of the Tamil Nadu Co-operative Societies Act for each and every category as per the rule of reservation, the Selection Committee was constituted. It is also seen that the third respondent was selected and appointed as Manager in the respondent Bank under the Open Competition (OC) category vide order dated 09.6.1990 and the petitioner was appointed as Manager under the BC category. Indisputably, as per the merit list and the roster with communal rotation, the first place falls to the Open Competition and the second post is earmarked for the Scheduled Caste and Scheduled Tribes while the third post is for the BC. From the records, it is seen that the employment number of the third respondent is No.39 and the petitioner's number is 40. It is also stated that there was a change in employment number by the office, in which, the name of the petitioner was brought ahead. When the said list was published in 2012, the third respondent had given his objections and a writ petition was filed challenging the change in rank. Thereafter, the mistake was rectified and original seniority list was restored following communal rotation.

12. A perusal of the records would also show that the Selection Committee, after completing the selection process, issued the selection list wherein the petitioner was ranked in third place, while the third respondent and one K. Premkumar were ranked in the positions 1 and 2 respectively and accordingly, the third respondent was issued appointment Order by placing in serial No. 1. If at all the petitioner is aggrieved over the seniority, at the most, he ought to have challenged the same at the time of appointment itself before the appropriate authorities.

13. Admittedly, power has been specifically conferred on the revisional authority under Section 153 of the Act to call for and examine the record of any proceeding under the Act or the Rules or the by-laws of any officer subordinate to the Registrar or of the



Board of Director or any officer of a registered society or of the competent authority constituted under Section 75(3) of the 1983 Act.

14. In this regard, it would also be relevant to refer to the decision of this Court in **P. Eswaramoorthy vs. R.J.B. Leoraj [2008 (5) MLJ 238]** wherein it has been held that the employees of a Co-operative Society can approach the Registrar or any competent authority under Section 153 to revise any order passed by the Co-operative Society relating to disciplinary action taken against him or denial of promotion or wrong fixation of seniority, etc.

15. As contended by the petitioner, the seniority list was not revised on the basis of communal rotation, but based on the merit list and roster. The official respondents have also adopted due procedures to revise the seniority list after receiving his objections. Hence, the petitioner cannot have any grievance. Therefore, the revision of seniority list cannot be termed as illegal and contrary to Government Orders and Rules.

16. In view of the settled legal position, it is clear that the petitioner has failed to avail the alternative remedy of revision available under Section 153 of the Act. The act of the petitioner invoking writ jurisdiction of this Court by filing petitions one after another claiming promotion, especially when the Writ Petition is not maintainable against the Co-operative Society, cannot be countenanced.

17. In fine, this **Writ Petition fails and the same stands dismissed**. However, in the circumstances of the case, there shall be no order as to cost. As a sequel thereto, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Registrar of Cooperative Societies, Kilpauk, Chennai

2.The Managing Director,

The Central Co-operative Bank Ltd., Kumbakonam, Thanjavur

+1cc to Mr.T.A.EBENEZER, Advocate Sr.No.29114

+1cc to Mr.S.KARTHICK, Advocate Sr.No.28968

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W.P. (MD) NO. 3857 OF 2016

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