

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.7147 of 2013

T.Sivakumar

..Petitioner

Vs

1. Registrar of Co-operative Societies,
Kilpauk,
Chennai 600 010.
2. Joint Registrar/Revision Officer,
O/o. Joint Registrar of Co-operative Societies,
Beach Road, Cuddalore - 607 001.
3. The Deputy Registrar of Co-operative Societies,
Pudupalayam Main Road,
Cuddalore - 607 001.
4. The Special Officer,
Kurunjipadi Primary Agricultural
Co-operative Credit Society Ltd.,
Pattaiveedhi, Kurunjipadi - 607 302.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus or any other appropriate Writ, order or direction in the nature of writ calling for the records of the Second Respondent relating to his order No.Rc.4258/2012 Thu.Va.Tha.1 dated 24.09.2012.

For Petitioner : Mrs.M.Meenakshi

For Respondents: Mr.L.P.Shanmugasundaram, Spl GP

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner's claim for promotion to the post of Junior Assistant was negatived by 3rd respondent and on revision, it was confirmed by the 2nd respondent and challenging the legality of the same, the present Writ Petition is filed.

3 The petitioner in the affidavit filed in support of this Writ Petition would aver among other things that he joined in the services of 4th respondent / Society on 01.12.1987 as a Salesman and would claim that apart from his academic qualification, he has also passed Diploma in Co-operative Training in the year 1997 to 1998 and his services have been regularised with effect from 12.03.2001 by the 2nd respondent vide proceedings No.Rc.1159/7/Nu(6) dated 26.03.2007 and as such, he is deemed to a regular employee for all purpose which includes his claim and eligibility to be considered for promotion to the post of Junior Assistant.

4 The Petitioner would further claim that he has put in hard, sincere and unblemished service to the satisfaction of the superior Officers. The Petitioner would further aver that the Elected board of the 4th respondent Society in resolution No.11 dated 22.06.2000 had promoted his Juniors Viz., P.Balasubramanian, P.Ravi, T.Punniyamoorthy and K.Amirthalingam, with effect from 01.04.2000 and they are working as a Junior Assistant in the Supernumerary post. The petitioner on becoming aware of the fact that the Juniors has been given promotion as a Junior Assistant by overlooking his genuine and rightful claim, submitted a representation dated 08.07.2000 to the 4th respondent to consider his claim and to promote him to the post of Junior Assistant on par with his juniors and he had also sent repeated representations / reminders to the 4th respondent management also and he was not favoured with any kind of response.

5 The petitioner states that he was left with no option and raised an objection under Section 90 of the Tamil Nadu Co-operatives Societies Act, 1983 before the 3rd respondent and vide Award dated 24.06.2011, the society/4th respondent was instructed to examine the case of the petitioner with due consideration to the date of joining and the date of passing of the Co-operative Training and whenever any vacancy arise in future in the post of Junior Assistant subject to specified cadre strength.

6 The Petitioner in this regard has also submitted a representation to the 3rd respondent to consider his claim and once again a direction was given to the 4th respondent to consider his claim. The Petitioner aggrieved by the non-granting of positive direction to promote him to the post of Junior Assistant by the 3rd respondent, filed a revision petition under Section 154 of the Tamilnadu Co-operative Societies Act, 1983, before the 2nd respondent and it was returned on the ground of limitation. The petitioner made a challenge to the said order by filing WP.No.17631 of 2012 and it was allowed on 16.07.2012 by directing the 2nd respondent to entertain the revision and

give a disposal on merits and in accordance with law.

7 The learned counsel for the petitioner would submit that in the light of the said direction, the 2nd respondent has taken the revision on file and held that the juniors who have been granted promotion as completed Co-operative training prior to him and that they are posted after considering their claim for promotion to the post of Junior Assistant. The Petitioner would further submit that the 2nd respondent has also rejected the said revision on the ground of delay that the petitioner had approached the concerned authorities after 12 years. It is the submission of the learned counsel for the petitioner, admittedly, at the time of giving promotion to the Juniors of the petitioner with effect from 01.04.2000. He has already passed the Diploma in Co-operative training and drawn the attention of this Court to typed set of documents wherein a certification has been given by the Secretary of the 4th respondent to that effect the passed Diploma in Co-operative Training has been incorporated in the service rules of the petitioner during April 1999 and therefore, it is urged that on the date of considering the claim of the petitioner, the juniors are promoted to the post of Junior Assistant. The petitioner has cleared the Diploma in Co-operative Training and in the absence of any rules / regulations / administrative instructions to consider the claim of an eligible person for promotion to the post of Junior Assistant based on earlier passing of Diploma in Co-operative Training, the claim of petitioner ought to have been considered and he should have been accorded promotion to the post of Junior Assistant and prays for interference and appropriate orders.

8 Per contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-op) appearing for the respondents 1 to 3 would submit that the Juniors to the petitioner had passed the Diploma in Co-operative Training in the year 1993 - 1994, whereas the petitioner has cleared the same only during the year 1997-98 and since the persons who had already cleared, submitted representations for promotion to the Post of Junior Assistant, they were considered and they have been given promotion. It is further submitted that as per the cadre strength fixed by the Department of Co-operative in G.O.Ms.No.189 of 31.03.2009, there are no further post available in the cadre of Junior Assistant and considering the fact, the petitioner has belatedly made a claim after 11 years, there cannot be any positive direction directing the respondents to give the promotion to the post of Junior Assistant and prays for dismissal of the Writ petition.

9 Mr.L.P.Shanmugasundaram, learned Special Government Pleader for the 4th respondent also had invited the Counter affidavit and would submit that since the passing of the test

has been belatedly brought to the knowledge of the society, his claim was not considered and admittedly, the petitioner has revealed his claim after nearly 11 years and at this distance point of time it is not possible to promote and accommodate him as a Junior Assistant for the reason that it exceeds cadre strength and there cannot be any positive direction to create a post to accommodate and prays for dismissal of the Writ petition.

10 This Court paid its best attention to the rival submissions and also perused the materials placed before it.

11 Admittedly, the petitioner at the relevant point of time was senior to persons who have been promoted as a Junior Assistant and according to the respondents 3 & 4, since, they have cleared the Diploma in Co-operative Training earlier than that of the petitioner during the year 93-94 and in the light of the representation made by them, their claims were positively considered and they were given promotion.

12 A perusal of the additional typed set of documents would disclose the fact of the petitioner passing of the Diploma in Co-operative test was also brought to the knowledge of the 4th respondent society. The relevant entries have been made even during April 1999.

13 Admittedly, the claim of Juniors to the petitioner for promotion to the post of Junior Assistant were taken up and was considered during the year 2000 and at that point of time, necessary entry also been made in the Service Register as to the passing of the said test and therefore, in all fairness the 4th respondent / Society ought to have looked into the records and assessed the comparative merits and demerits of the persons who had cleared the Diploma in Co-operative training test for promotion to the post of Junior Assistant and unfortunately, the claim of the petitioner has been overlooked.

14 It is also not brought to the knowledge of the Court as to the relevant bye-laws, rules, regulations or administrative instructions to the fact that the promotion to the post of Junior Assistant can be considered by taking into consideration the date of passing of the said test and in the absence of the same, the non-consideration of the claim of the petitioner for promotion to the post of Junior Assistant despite the fact that he has cleared the said exam, is unsustainable. However, the fact remains the petitioner had slept over the claim for nearly 12 years and only during the year 2012, he has approached the 3rd respondent and though the 3rd respondent has directed the 4th respondent / Society to consider his claim, the said exercise is

to be done subject to the availability of the vacancy and in the light of the said stand taken by the 3th and 4th respondent as to the fixing of the cadre strength and non availability to the post of Junior Assistant as on date, this Court is not in a position to issue any positive direction to promote him to the post of Junior Assistant.

15 In the result, the Writ petition is partly allowed and the impugned order passed by the 2nd respondent 24.09.2012 in order No.RC.4258/2-12 Thu.Va.Tha.1 dated 24.09.2012 and taking into consideration the above infirmity pointed out in the act of the 4th respondent in non-considering the claim of the petitioner though he was eligible to be considered while the claim of the Juniors were considered in the year 2000, this Court directs the 4th respondent to consider the claim of the petitioner positively for promotion to the post of Junior Assistant and if it needs creation of any supernumerary post it can be done also. The 4th respondent may approach the concerned authorities through proper channel and take expeditious steps and complete the said exercise as expeditiously as possible and not later than three months from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

SK

To

1. Registrar of Co-operative Societies,
Kilpauk,
Chennai 600 010.
2. Joint Registrar/Revision Officer,
O/o. Joint Registrar of Co-operative Societies,
Beach Road, Cuddalore - 607 001.
3. The Deputy Registrar of Co-operative Societies,
Pudupalayam Main Road,
Cuddalore - 607 001.
4. The Special Officer,
Kurunjipadi Primary Agricultural
Co-operative Credit Society Ltd.,
Pattaiveedhi, Kurunjipadi - 607 302.

Copy to:-

The Secretary to Government,
State of Tamil Nadu, Cooperation, Food
and Consumer Protection Department
Fort St George, Chennai-9.

+1 CC to Mr.L.P.Shanmugasundaram, Advocate sr 39982

+1 CC to Govt. Pleader sr 40052

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