

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.03.2017
Delivered on : 15.03.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.23379 of 2013 and
M.P.No.1 of 2013

- 1.Union of India represented by
The Secretary to Government (Co-operation)
Chief Secretariat, Government of Puducherry,
Puducherry.
- 2.The Registrar of Co-operative Societies,
Co-operative Department,
Puducherry.Petitioners

vs.

- 1.The Registrar, Central Administrative Tribunal
Madras Bench, Chennai.
- 2.M.Veerappan ..Respondents

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of Certiorari, to quash the order passed by the first respondent Tribunal in Original Application No.727 of 2009 dated 7.10.2010.

For Petitioners:Mr.Syed Mustafa
Special Govt. Pleader (Puducherry)

For Respondents:Mr.Ajaykumar for R2
R1 - Tribunal

O R D E R

K.K. SASIDHARAN, J.

Basic Facts:-

The Administration of the Union Territory of Puducherry made an attempt to help the second respondent to function as Joint Registrar of Co-operative Societies taking inspiration from the order passed by the Division Bench dated 18 July 2008 in the

writ petition in W.P.No.12250 of 2005, to consider his case sympathetically at least as a deputationist for promotion to the post of Joint Registrar of Co-operative Societies. Accordingly, the petitioner was given adhoc promotion to the post of Joint Registrar of Co-operative Societies, by order dated 20 February 2009. He was granted the related pay scale applicable to the Officers of Pondicherry Civil Service (Entry Grade). The petitioner notwithstanding the indulgence shown by the Government, dragged the Pondicherry Administration to the mist of a litigation, by claiming higher pay scale from 18 July 2008, the date on which the High Court directed the Government of Puducherry to consider his case sympathetically. The Tribunal, without understanding the background facts allowed the original application. Feeling aggrieved, the Government of Puducherry is before this Court.

Submissions:-

2. The learned Special Government Pleader (Services) contended that the post of Joint Registrar of Cooperative Societies is not a promotional post. The method of recruitment for appointment to the post of Joint Registrar of Co-operative Societies is by transfer on deputation or by direct recruitment. According to the learned Special Government Pleader, the plea taken by the second respondent to promote him to the post of Joint Registrar was negatived by the Tribunal earlier. However, the High Court directed the Government to consider his case sympathetically. According to the learned Special Government Pleader, it was only to show some indulgence to the second respondent, taking into account the order passed by the Division Bench, dated 18 July 2008, he was given promotion. The Tribunal at the instance of the second respondent directed revision of his pay scale and more particularly, the pay scale of Rs.8000 - 13500 (pre-revised) with effect from the date of his appointment as Joint Registrar. According to the learned Special Government Pleader, the second respondent was not entitled to the pay scale claimed by him on account of the order giving him adhoc promotion, pursuant to the direction given by this Court and without there being any right to claim such promotion.

3. The learned counsel for the second respondent, while justifying the order passed by the Central Administrative Tribunal contended that the second respondent was promoted to the post of Joint Registrar of Co-operative Societies and as such, he was entitled to the pay scale applicable to the said post. According to the learned counsel, the petitioners granted promotion to the second respondent taking into account the direction given by the Division Bench. Such being the position, the petitioners erred in granting lower scale to the second respondent. The Tribunal was therefore correct in allowing the original application.

Discussion and Conclusion:-

4. The request made by the second respondent for granting him promotion to the post of Joint Registrar of Cooperative Societies was negated by the Government of Puducherry. The said decision was challenged in O.A.No.804 of 2003. The seniority list published by the Government of Puducherry in the post of Deputy Registrar of Cooperative Societies was challenged by him in O.A.No.803 of 2003. We are now concerned only with the claim made by the second respondent for promotion to the post of Joint Registrar of Cooperative Societies.

5. The Tribunal by way of a well considered order rejected the contention taken by the second respondent that he is entitled to be promoted to the post of Joint Registrar of Cooperative Societies. The Tribunal arrived at a clear finding that the Deputy Registrar of Cooperative Societies is not entitled as a matter of right for promotion to the post of Joint Registrar. The original application in O.A.No.804 of 2003 was dismissed along with other original applications by order dated 24 June 2004.

6. The second respondent challenged the order in O.A.No.834 of 2003 before the Division Bench in W.P.No.12250 of 2005. The Division Bench concurred with the views expressed by the Tribunal. The Division bench instead of interfering with the order passed by the Tribunal granted limited relief to the second respondent by directing the Pondicherry administration to consider his case sympathetically.

7. The relevant portion of the order in the writ petition in W.P.No.12250 of 2005 would read thus:-

"13. The Court taking into consideration all the submissions made by the counsel appearing on either side is of the view that the official respondents can sympathetically consider the case of the petitioner at least as a deputationist to the post of Joint Registrar of Co-operative Societies till the finalisation of recruitment rules as he is having necessary educational qualification and experience as Deputy Registrar of Co-operative Societies. As and when recruitment rules will come into force and if the petitioner is found to be qualified in accordance with the said rules to be framed, his claim can be considered by the official respondents."

8. The second respondent was given promotion to the post of Joint Registrar of Cooperative Societies by order dated 20 February 2009. The order indicates that the second respondent is entitled to draw the pay and allowances in Pay Band 2 - Rs.9300-34800 + Rs.4,800 (Grade Pay). The second respondent accepted the said order without any whisper or objection.

9. The second respondent taking advantage of the order dated 20 February 2009, promoting him to the post of Joint Registrar of Cooperative Societies purely on sympathetical ground filed O.A.No.727 of 2009 before the Tribunal. The second respondent contended that he is entitled to be promoted to the post of Joint Registrar of Cooperative Societies with effect from 18 July 2008, the date on which the Hon'ble High Court directed the Pondicherry Administration to consider his case and grant him the pay scale of Rs.8000-13500, which is attached to the said post.

10. The Tribunal, proceeded as if the second respondent was promoted to the post of Joint Registrar of Cooperative Societies and as such, he is entitled to the pay scale of Rs.8000-13500. The Tribunal set aside the order fixing the pay scale of the second respondent and directed the petitioners to grant him the pay scale of Rs.8000-13500 (pre-revised). The Tribunal in its anxiety to give relief to the second respondent failed to consider the basic fact that the second respondent was given the correct pay scale and the same was indicated in the order dated 20 February 2009 granting him promotion. There was no challenge to the order dated 20 February 2009 and the pay scale given to the second respondent at any point of time. The second respondent accepted the order dated 20 February 2009 with his eyes open. Thereafter, without challenging the pay scale granted to him, the second respondent filed Original Application claiming a different pay scale. There was no prayer in the original application to set aside the order dated 2 April 2009 fixing the scale of pay. Even then, the Tribunal set aside the said order and granted relief to the second respondent.

11. The only relief claimed in the original application was to promote the second respondent to the post of Joint Registrar of Co-operative Societies with effect from 18 July 2008 and grant him the pay scale of Rs.8000-13500. We are at a loss to understand as to what made the Tribunal to quash the order fixing the pay scale, without there being any challenge to the said order in O.A.No.727 of 2009. The Tribunal in a very casual manner allowed the original application without making an attempt to understand the implications of the order dated 24 June 2004 in O.A.No.804 of 2004 and the related order in W.P.No.12250 of 2005 dated 18 July 2008.

12. The order granting promotion to the second respondent to the post of Joint Registrar itself was a concession. The Pondicherry Administration respected the sentiments expressed by the High Court in its order dated 18 July 2008 and accommodated the second respondent. Strictly speaking, the second respondent has no right to be considered for appointment to the post of Joint Registrar, as the same was not a promotional post. There was no feeder category for appointment to the post of Joint Registrar. It was an entry grade post in the Pondicherry Civil Service. The second respondent was given the correct pay scale, pursuant to the order dated 20 February 2009. When there being no challenge to the said order, the Tribunal was not correct in granting the second respondent a different pay scale taking into account his adhoc appointment. The Tribunal also erred in directing the petitioners to grant revision of pay scale by taking into account the recommendation given by the VI Pay Commission.

13. The order passed by the Tribunal misconstruing the earlier proceedings is liable to be set aside.

14. The order dated 7 October 2010 is set aside. The Original Application in O.A.No.727 of 2009 on the file of the Central Administrative Tribunal is dismissed.

15. In the up shot, we allow the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Registrar, Central Administrative Tribunal
Madras Bench, Chennai.

2.The Secretary to Government (Co-operation)
Union of India,
Chief Secretariat, Government of Puducherry,
Puducherry.

3.The Registrar of Co-operative Societies,
Co-operative Department,
Puducherry.

+1cc to the Government Pleader Sr.16620
+1cc to Mr.V.Ajayakumar, Advocate Sr.16025

W.P.No.23379 of 2013

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srg 24/03/2017



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