IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27015 of 2013

K.Suthandira Mohan .. Petitioner

vs.

1.The Director of Co-op. Audit
Tamil Nadu Slum Clearance Board Building
Kamarajar salai, Chennai-5.

2.The Assistant Director of Co-op. Audit
No.13, Chairman Chidambaram Street
Villupuram, Villupuram District. ..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.35260/2011/A.Pa.A.1 dated 17.07.2013 and quash the same and consequently directing the respondents to declare the probation of the petitioner with retrospective effect and promote the petitioner for the post of Senior Co-operative Auditor and Co-operative Audit Officer by fixing the revision of pay scales and disburse the medical leave salary and arrears of salary to the petitioner.

For Petitioner ... Mr.C.Prakasam
For Respondents... Mr.L.P.Shanmugasundaram
Spl.G.P.

O R D E R

The writ petition on hand is preferred questioning the validity of the order passed by the first respondent in proceedings dated 17.07.2013 and for a consequential direction to declare the probation of the petitioner with retrospective effect from the date of completion of two years of service and seeking further promotion to the post of Senior Co-operative Auditor and Co-operative Audit Officer.

2. Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents.

3. The factual matrix as narrated in the affidavit filed by the writ petitioner along with the writ petition states that he was appointed as a Junior Inspector/Auditor on 25.07.1984 in the department of the Co-operative Audit and the post was subsequently re-designated as Junior Co-operative Auditor. His initial appointment was temporary and subsequently, the Government conducted a special examination during the year 1989 for recruitment to the post of Junior Inspector of Co-operative Audit. The post of Junior Co-operative Auditor comes under the purview of the Tamil Nadu Public Service Commission and that is the reason why the special test was conducted to recruit the temporary employees, who are already holding the post and not appointed in accordance with the recruitment rules. The writ petitioner successfully completed the special test and his services were subsequently regularised by the Government in G.O.Ms.No.445, Finance (Co-operative Audit) Department, dated 20.12.2005. The name of the writ petitioner is found in serial number 13 of the said G.O. and accordingly, his service was regularised in the post of Junior Audit Officer. Pursuant to the regularisation, pay protection was also granted to the writ petitioner by virtue of G.O.Ms.No.446, Finance (Co-operative Audit) Department, dated 30.12.2010.

4. The grievance of the writ petitioner is that though his service was regularised by the Government after passing the special examination conducted by the Tamil Nadu Public Service Commission, the probation is not yet declared in view of the fact that he has not completed the required departmental examinations namely, Account Test Part-1.

5. The learned counsel for the writ petitioner submitted that the petitioner has not completed Account Test Part-I examination prescribed under the Rules. In view of this, his probation was not declared during the relevant point of time. The impugned order passed by the first respondent also clarifies that the writ petitioner has passed the required departmental examinations and thus, his probation was unable to be declared on completion of two years of service from the date of regularisation. He submitted a judgment passed by the Hon'ble Division Bench of this Court made in W.A.Nos.140 to 142 of 2008 on 26.02.2008. The issue regarding the passing of Account Test for Subordinate Officers - Part-1 was liberally dealt with. The Government has granted exemption of passing test to these categories of employees. The relevant portion of the judgment is extracted hereunder:

"17. From the records including G.O.Ms.No.221, dated 10.5.1990 issued from Personnel and Administrative Reforms (PER.S) Department, it will be evident that even prior to the 1986 Rules, there are prescription to pass the requisite Account Test for Subordinate Officers and exemptions were granted by the State from time to time by G.O.Ms.No.1125, dated 30.10.1990 issued from Finance (TH & CA) Department. Such exemption was granted from passing examination as was prescribed under the ad-hoc Rules of 1986 to those who opted for permanent absorption in the Co-operative Audit Department exercising option by 22.9.1987. Such exemption was not granted to the new entrants of the Co-operative Department entered subsequently.

18. From the Government Order in G.O.Ms.No.626, Finance (Co-operative Department), dated 26.7.1995, it appears that 330 temporary Junior Inspectors working in the Co-operative Department, selected by the TNPSC in the Special Qualifying Examination to the Co-operative Audit Department, were made permanent from the date of regularisation of their services, i.e. with effect from 16.10.1989. In the Government Order in G.O.Ms.No.115, dated 17.5.1995 issued from Co-operation, Food and Consumer Protection Department, the Government have relaxed Rules 9 and 10 of ad-hoc Rules for the post of Junior Co-operative Auditors in favour of 107 Junior Temporary Co-operative Auditors so as to exempt them from undergoing training prescribed in Rule 10 of the ad-hoc Rules. From G.O.Ms.No.626, stated above, it further appears that the intention of the orders issued in G.O.Ms.No.115, in relaxation of Rules 9 and 10 of the ad-hoc Rules, was to promote all Junior Inspectors/Junior Co-operative Auditors to the cadre of Senior Inspectors/Senior Co-operative Auditors, in the vacancies pending for a long time. The hurdle to achieve the above intention in the case of Junior Co-operative Auditors was that they would have to pass also the District Office Manual Test and the Account Test for Subordinate Officers-Part-I, since passing of those Tests is a pre-requisite for the Junior Co-operative Auditors for declaration of probation and their promotion as Senior Co-operative Auditors.

19. It is in the aforesaid background, the Directorate of Co-operative Audit proposed to give certain permanent exemption which was examined by the State Government, and decided to accept the same, as is evident from paragraph 5 of G.O.Ms.No.626, dated 26.7.1995, quoted above, thereby, it will be evident that those who are covered by G.O.Ms.No.626, dated 26.7.1995, have been exempted permanently by the State from passing the Account Test for Subordinate Officers-Part-I and for promotion to the superior post of Senior Co-operative Auditor, including the respondents-Writ Petitioners, in the present appeals. Such permanent unconditional exemption having been granted by the Government in their favour, they are also covered by the ratio laid down by this Court in Writ Appeal No.106 of 1979, wherein, this Court held that such exemption must be deemed to have been given by the authorities from passing the relevant test for any post which requires such pre-requisite qualification.

20. In view of our findings as recorded above, we are not inclined to interfere with the findings of the learned single Judge and uphold the impugned common order, dated 3.10.2007 passed in W.P.Nos.48855, 41145 and 49177 of 2006. There being no merits, the Writ Appeals are dismissed. No costs. The Miscellaneous Petitions are closed."

6. In yet another case, this Court has also passed an order in W.P.No.16309 of 2010 on 29.03.2011 on the similar issue as extracted hereunder:

"34. In the absence of any serious complaints, from any of the quarters, stated supra, rejection of the request of the petitioner for relaxation of Rule 12-A of the General Rules is not only against the orders of the interim stay granted by the Tribunal and that the order of removal, a major penalty, cannot be inflicted, to achieve object of discharging him from service. As the petitioner has rendered 27 years of unblemished service, which is not controverted by the respondents, this Court is of the considered view that the Government ought to have shown some leniency in allowing the petitioner to retire peacefully from service, as done in the case of Mr.G.S.N.Khadri. Pension and other retiral benefits are the only source of income to a Government Servant, after rendering a long number of years of service.

Except passing the second language test in Tamil, the petitioner had maintained a clean record of service, which deserves due consideration, and if pension and other retiral benefits are denied, it would cause serious hardship and agony. The petitioner has served his master satisfactorily for 27 years and he should not have been sent out by an order of removal, thus, depriving him of the retiral benefits, for the only mistake, in not passing the language test. Needless to say, even persons, who have committed misconduct are allowed to work, after awarding appropriate penalty, depending upon the gravity of the charge.

35. In such view of the above, this Court is inclined to interfere with the impugned order. Accordingly, the impugned order is set aside and consequently, a direction is issued to the respondents to allow the petitioner to retire from service, by granting relaxation of the rules, with consequential service and monetary benefits, including retiral benefits and pension, with effect from the date of attaining the age of superannuation and disburse the arrears.

36. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed."

7. In view of the judgments and on facts, the impugned order is infirm. Accordingly, the impugned order dated 17.07.2013 passed by the first respondent in proceedings Na.Ka.No.35260/2011/A.Pa.A.1 is quashed. The first respondent is directed to reconsider the case of the writ petitioner in the light of the exemptions granted by the Government and in the light of the judgments rendered by this Court as cited supra and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order.

8. In the result, the Writ Petition stands allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Director of Co-op. Audit
Tamil Nadu Slum Clearance Board Building
Kamarajar salai, Chennai-5.

2.The Assistant Director of Co-op. Audit
No.13, Chairman Chidambaram Street
Villupuram, Villupuram District.

\+ 2ccs to Mr.C. Prakasam, Advocate Sr.36661

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BR(CO)
EU 5.5.17