

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM

THE HON'BLE MR. JUSTICE B.RAJENDRAN

W.P. No. 43531 of 2016

S.Elangovan

Joint Registrar of Co-op. Societies (Retired)

No.307, Chinnappan Street,

Arisipalayam,

Salem - 636 009

.. Petitioner

Versus

1. The Secretary to Government
Co-operation Food and Consumer Protection Department
Fort St. George
Chennai - 600 009

2. The Registrar of Co-op. Societies
Kilpauk, Chennai - 600 010. .. Respondents

Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, to call for the records in respect of the impugned order in G.O. (2D) No.44, Cooperation, Food and Consumer Protection (CE1) Department, dated 26.07.2016 issued by the 1st respondent, quash the same and direct the 1st respondent to include the name of the petitioner in the panel of Joint Registrars for promotion as Additional Registrars for the year 2007-2008 approved in G.O. (2D) No.11, Cooperation, Food and Consumer Protection (CE1) Department dated 22.01.2008 and promote him as Additional Registrar with all consequential monetary benefits.

For Petitioner : Mr. R. Singaravelan, Senior Counsel
for Ms. M. Srividhya

For Respondents : Mr. L.P. Shanmugha Sundaram
Special Government Pleader

ORDER

This writ petition has been filed praying for the issuance of a writ of Certiorarified Mandamus, to call for the records in respect of the order passed in G.O.(2D) No.44 Cooperation, Food and Consumer Protection (CE1) Department, dated 26.07.2016 issued by the 1st respondent, quash the same and direct the 1st respondent to include the name of the petitioner in the panel of Joint Registrars for promotion as Additional Registrars for the year 2007-2008 approved in G.O. (2D) No.11, Cooperation, Food and Consumer Protection (CE1) Department dated 22.01.2008

and promote him as Additional Registrar with consequential monetary benefits.

2. The petitioner was directly recruited to the post of Deputy Registrar of Cooperative Societies on 10.06.1983 and he was promoted as Joint Registrar of Cooperative Societies from 15.07.1991. On 31.05.2008, the petitioner retired from service.

3. According to the petitioner, he was eligible and entitled for promotion to the post of Additional Registrar of Cooperative Societies in the panel drawn by the first respondent in the year 2006-2007 in GO (2D) No.13, Cooperation, Food and Consumer Protection Department dated 12.03.2007, however, his name was not included on the ground that he is undergoing currency of punishment of stoppage of increment for one year without cumulative effect imposed on 28.09.2005 in GO (D) No.363, Cooperation, Food and Consumer Protection Department. According to the petitioner, as against the non-inclusion of his name in the panel for promotion, he has filed an appeal on 09.05.2007 but it was rejected on 15.04.2010 much after his retirement on 31.05.2008 on the ground of currency of punishment and pendency of two set of charges under Rule 17 (b). According to the petitioner, the above said two charges were framed subsequent to the drawal of the panel on 26.05.2008 and 29.05.2008 and therefore, it has got nothing to do with inclusion of his name.

4. In the meantime, as against the order of punishment of stoppage of increment for two years with cumulative effect imposed on 26.09.2005, the petitioner has filed a Review on 15.12.2005 to the Government and it was pending with the first respondent. During the pendency of the Review, a subsequent panel was to be drawn for the next panel year namely 2007-2008. When the panel was likely to be drawn, the petitioner filed WP No. 2415 of 2008 before this Court for a Mandamus directing the first respondent to include his name in the panel for the year 2007-2008. By order dated 30.01.2008, this Court directed the first respondent to consider the Review Petition filed by the petitioner on 15.12.2005 as against the order of punishment imposed on him on 28.09.2005 within six weeks. However, only after more than two years, the Government passed an order in GO (D) No.218, Cooperation, Food and Consumer Protection Department dated 20.06.2008 allowing the Review Petition and thereby set aside the punishment imposed on the petitioner. According to the petitioner, in the meantime, his promotion was deferred and his juniors have marched him over.

5. As against the non-inclusion of his name in the panel for the year 2007-2008, the Petitioner has filed an appeal on 27.03.2008 to the first respondent. The appeal was kept pending and after eight years, it was rejected on 27.03.2008 stating that the petitioner is not eligible for inclusion of his name in the panel of Joint Registrars for the year 2007-2008 on the ground that the petitioner has suffered a punishment of pension cut of Rs.500/- per month for two years imposed in G.O. (D) No.284, Cooperation, Food and Consumer Protection Department

dated 29.10.2015 i.e., after 7 years of retirement on 31.05.2008. Such punishment was imposed, according to the petitioner, for the charges framed on 26.05.2008 just five days prior to the retirement of the petitioner.

6. The grievance of the petitioner is that since the Review Petition filed by the petitioner was allowed by issuing GO (D) No.218, Cooperation, Food and Consumer Protection Department dated 20.06.2008, setting aside the punishment of stoppage of increment imposed on 28.09.2005, there was no currency of punishment or there is no impediment for including his name in the panel drawn by taking the crucial date as 01.10.2007. In such circumstances, the petitioner has come up with this writ petition challenging the order dated 26.07.2016 of the first respondent rejecting the appeal filed by the petitioner as against the non-inclusion of his name in the panel for the year 2007-2008.

7. The learned Senior Counsel appearing for the petitioner would contend that the first respondent has not taken into consideration the vital fact that the crucial date for promotion is 01.10.2007 for which the panel was drawn for the year 2007-2008 on 22.01.2008. Though there was a punishment during the relevant period, that punishment was set aside/quashed by an order dated 20.06.2008. Once, the punishment has been quashed, then it dates back to the original order thereby it will not operate as an embargo and consequently the claim of the petitioner for inclusion of his name has to be automatically reckoned for the purpose of conferring promotion on the petitioner. Apart from the aforesaid disciplinary proceedings, which culminated in the order dated 28.09.2005 imposing the punishment of stoppage of increment, which was set aside in the order dated 20.06.2008 allowing the Review Petition, there is no other disqualification suffered by the petitioner during the relevant period or it will not operate as a bar for non-inclusion of his name as on 01.10.2007. Admittedly, the petitioner was imposed with punishment of deduction of Rs.500/- per month from his pension and such order was passed five days prior to his retirement on 31.05.2008. At any rate, such punishment will not be taken into consideration for non-including the petitioner in the panel for the year 2007-2008. In such circumstances, the learned Senior counsel for the petitioner prayed for allowing this writ petition.

8. The learned Special Government Pleader appearing for the respondents also filed a detailed counter stating that the first respondent has taken into consideration the entire facts and passed the order and it does not call for any interference.

9. I heard the learned counsel for both sides and perused the materials placed on record. The impugned order has been passed by the first respondent refusing to include the name of the petitioner in the panel of Joint Registrar of Cooperative Societies fit for promotion as Additional Registrar of Cooperative Societies for the panel year 2007-2008. The name of the petitioner was not included on the ground that there is

a currency of punishment on the petitioner. Admittedly, challenging the order of punishment imposed on the petitioner on 28.09.2005 in GO No.363, Cooperation, Food and Consumer Protection Department dated 28.09.2005, the petitioner has filed a Review on 15.12.2005 and it was allowed by issuing G.O. Ms. No.218, Cooperation, Food and Consumer Protection Department dated 20.06.2008. Therefore, the impediment in the form of punishment as against the petitioner can no longer put against him in so far as it relates to inclusion of his name in the panel for the panel year 2007-2008 as on the crucial date viz., 01.10.2007. Once the punishment is quashed, then the embargo goes automatically and the petitioner is entitled for conferment of promotion from the crucial date. Therefore, the argument of the learned Senior Counsel for the petitioner has to be accepted.

10. In the impugned order, the first respondent has made reference to the punishments imposed on the petitioner after the crucial date. When, as on the crucial date, there was a punishment and it was subsequently set aside in the Review Petition filed by the petitioner, the subsequent punishments imposed against the petitioner cannot be taken note of by the first respondent to deny the petitioner inclusion of his name in the panel which was drawn by taking crucial date as on 01.10.2017 for the panel year 2007-2008. In other words, the subsequent punishment imposed on the petitioner will not operate as a bar for the petitioner to get his name included in the panel for the year 2007-2008.

11. In support of his contentions, the learned Senior Counsel for the petitioner has relied on a decision of this Court reported in 2016 Writ L.R. 847 (A.Kalaiselvan Vs. The State of Tamil Nadu, Rep. by the Principal to Government, Commercial Taxes and Registration Department, Secretariat, Fort St. George, Chennai - 9 and another wherein it was held that when there is no currency of punishment on the crucial date, the subsequent charge memo cannot be a bar for promotion. The said decision rendered by this Court squarely applies to the facts of this case.

12. In the light of the above, the order passed by the first respondent in G.O. (2D) No.44, Cooperation, Food and Consumer Protection (CE1) Department, dated 26.07.2016 passed by the first respondent is set aside. The matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to take note of the observations made above and to pass orders afresh on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CCC)

To

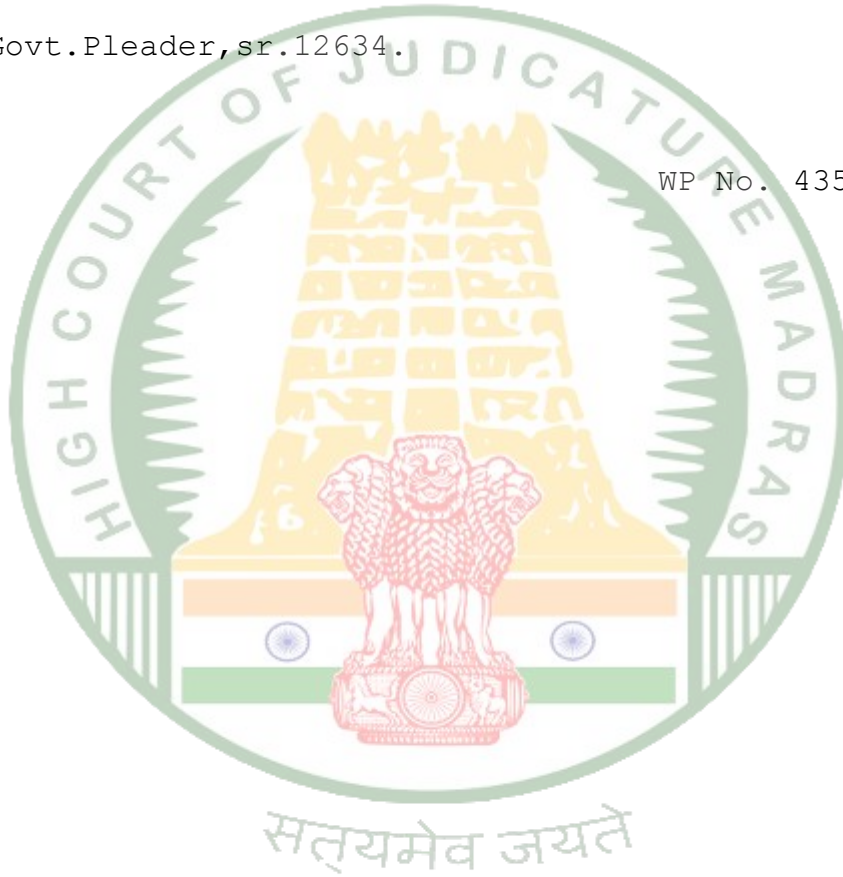
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Kilpauk, Chennai - 600 010.

+1 cc to Ms.Srividhya,advocate,sr.12180

+1 cc to Govt.Pleader,sr.12634.

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WP No. 43531 of 2016



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