



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.159 of 2014

and

M.P. (MD).Nos.1 and 2 of 2014

M.Panaiyadiyan

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
N.V.M. Maaligai,
No.170, E.V.R. High Road,
Kilpauk, Chennai-600 010.

2.Joint Registrar of Co-operative Societies,
Thiruchirappalli Region,
Thiruchirappalli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to impugned proceedings of the first respondent vide Rc.No.19703/2010/EM1 dated 14.11.2013 and quash the same and consequently direct the first respondent to include the petitioner's name in the promotional panel of Senior Inspector fit to be promoted as Co-operative Sub-Registrar as on the crucial date of 01.05.2011 and to provide notional promotion from the date on which the petitioner's junior has been promoted as Co-operative Sub-Registrar.

For Petitioner

: Mr.D.Shanmugraja Sethupathi

For Respondents

: Mr.J.Gunaseelan Muthaiah,
Government Advocate.

ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, challenging the impugned proceedings of the first respondent dated 14.11.2013, and to quash the same and consequently to direct the first respondent to include the petitioner's name in the promotional panel of Senior Inspector fit to be promoted as Co-operative Sub-Registrar as on the crucial date of 01.05.2011 and to provide notional promotion from the date on which the petitioner's junior has been promoted as Co-operative Sub-Registrar.

<https://hcservices.ecourts.gov.in/hcservices/> Heard, Mr.D.Shanmugraja Sethupathi, learned counsel appearing for the petitioner and Mr.J.Gunaseelan Muthaiah, learned Government Advocate appearing for the respondents.

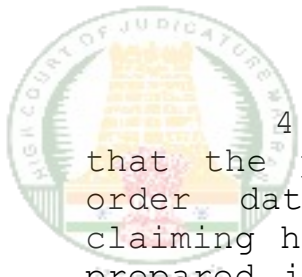


3.The brief facts that are necessary for disposal of this Writ Petition are as follows:

3.1. The petitioner was appointed as Junior Inspector in the Co-operative Department on 13.12.1985, and he was promoted as Senior Inspector on 31.03.1999. After serving a period of 12 years as Senior Inspector, a charge memo dated 29.01.2010 under Rule 17 (b) of Tamil Nadu Civil Service (Discipline and Appeal) Rule was issued to the petitioner. The allegations are that the petitioner has failed to supervise the Society properly and that he was negligent in preventing certain irregularities committed by the Sales Man of the Fair Price Shop run by the Society. Another set of charge memo was also issued to the petitioner dated 29.01.2010, under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rule alleging certain irregularities committed by the petitioner as a Special Officer of this Society. It is not in dispute, that subsequently, both the charge memos were altered to one under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rule. The petitioner was also implicated in a criminal case in C.C.No.76 of 2010 on the file of Judicial Magistrate, Musiri.

3.2.As against the criminal case that was pending in C.C.No.76 of 2010 on the file of Judicial Magistrate, Musiri, the petitioner filed Crl.O.P.No.19334 of 2012 to quash the criminal proceedings against the petitioner and by order dated 31.01.2013, the said Crl.O.P. was allowed, quashing the criminal proceedings against the petitioner. While so the petitioner's name was deferred in the panel of Senior Inspector of Co-operative Society fit for promotion as Co-operative Sub Registrar (for which the crucial date was 01.05.2011), in view of the pendency of criminal case against him. Since the criminal case was quashed by this Court, the petitioner requested his name to be considered for promotion as Co-operative Sub-Registrar, stating that he is eligible as on 01.05.2011, on the ground that no criminal case was pending against him on the crucial date.

3.3.A representation was made earlier on 27.02.2013, stating that the petitioner's name should be included in the panel for the year 2011. However, the representation was rejected by the impugned order dated 14.11.2013, by stating that, though the criminal case pending against the petitioner was quashed by the High Court, a punishment of stoppage of increment for one year without cumulative effect was awarded by the Deputy Registrar on 31.10.2012, for another set of charges and that the petitioner is not eligible to be considered for promotion to the post of Co-operative Sub- Registrar as on 01.05.2011. This Writ Petition is therefore filed to quash the impugned order and for consequential relief.



4. The learned counsel for the petitioner would submit that the punishment of stoppage of increment for one year, by order dated 31.10.2012, cannot prevent the petitioner from claiming his name to be considered for promotion as per the panel prepared in 2011, for which the crucial date was 01.05.2011, and on which date, no 17(b) charges pending against him and that the promotion was deferred in 2012, only because of the pendency of criminal case in C.C.No.76 of 2010 on the file of Judicial Magistrate Court, Musiri. The petitioner's name was also not included in the panel prepared for the year 2012.

5. The learned counsel for the petitioner would further submit that once the criminal case was quashed, consequently, the petitioner is entitled to be considered for promotion along with his junior. In other words, since the crucial date was 01.05.2011, for preparing the promotion panel for the year 2011-12, the learned counsel for the petitioner submitted that the respondent ought not to have rejected the representation of the petitioner dated 27.02.2013. The learned counsel for the petitioner relied upon the judgment of the Honourable Supreme Court in the case of *C.O.Arumugam and Others v. State of Tamil Nadu* and others reported in 1991 Supp (2) Supreme Court Case 199, wherein the Honourable Supreme Court has held as follows :-

"5.As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whole charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

6. In the light of these principles, we may now examine the cases of respondents 3 to 5.

7. Thiru.A.Andi, respondent 3, was not included in the panel for promotion on the ground that there was a criminal case pending against him. His exclusion then would not be found fault with. But it is now stated that he has been acquitted by the criminal court on September 13, 1989. It has been stated so in the counter-affidavit filed before this Court. If he has been acquitted, he must now be considered for promotion from



the date on which his junior was promoted and if he is found suitable, he should be promoted with all consequential benefits".

6. Though the petitioner was promoted as Senior Inspector of Co-operative Department with effect from 31.03.1999, the case of the petitioner is that he is entitled to get notional promotion as Co-operative Sub-Registrar as on 01.05.2011, the date on which promotional panel was prepared on 31.08.2012, fit for promotion as Co-operative Sub-Registrar for the year 2011-12 for which the crucial date is 01.05.2011.

7. The learned Government Advocate filed a detailed counter affidavit reiterating the reason given by the first respondent in the impugned order. Sum and substance of the contention of the respondent is that on the crucial date namely 01.05.2011, different set of charge memos were framed against the petitioner and the same were pending. Though the charge memo was converted into one under Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rule, that was subsequent to the crucial date and therefore the pendency of charge memo framed under Rule 17(b) on the crucial date create a bar for including his name in the promotional panel for the year 2011 for considering him for the promotion. As regards the second charge memo is considered, though the punishment of censure was inflicted, it is admitted before this Court that the order of punishment was set aside by the Appellate Authority. Hence, the charge memo that was framed under Rule 17(a) was not stated as a reason even in the impugned order while rejecting the petitioner's representation. After the charge is converted as one under Rule 17(a), pendency of charge for minor penalty is not an impediment for inclusion of name in panel. There was no currency of punishment on the crucial date. As regards the criminal case that was pending against the petitioner on the crucial date that is 01.05.2011, it is not in dispute that this Court has quashed the criminal proceedings in a petition filed by the petitioner under Section 482 of the Criminal Procedure Code. Though the criminal case was quashed only in the year 2013, it will have an impact and effect on the issue relating to the promotion of the petitioner. As held by the Honourable Supreme Court in the case relied upon by the petitioner and referred to by this Court earlier, the respondent can not be found fault with for not including the petitioner's name in the promotional panel earlier, when the promotional panel was prepared during which the criminal case was pending. However, after the criminal proceedings were quashed in the year 2013, the petitioner's name has to be considered for promotion and the petitioner's request for promotion from the date on which his junior was promoted with all consequential benefits is justified. Since the principle enunciated squarely applicable to the case of the petitioner, this Court is not able to appreciate this stand taken by the respondents in the counter affidavit and the reasons



stated in the impugned order passed by the first respondent, dated 14.11.2013, are not sustainable in law.

8. As a result, this Writ Petition is allowed and the first respondent is directed to promote the petitioner notionally from the date on which the petitioner's junior has been promoted as Co-operative Sub-Registrar, as per the promotional panel of Senior Inspector fit to be promoted as Co-operative Sub-Registrar as on 01.05.2011. No Costs. Consequently, the connected W.M.P. (MD) Nos.1 and 2 of 2014 are closed.

Sd/-
Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Registrar of Co-operative Societies,
N.V.M. Maaligai,
No.170, E.V.R. High Road,
Kilpauk, Chennai-600 010.

2.Joint Registrar of Co-operative Societies,
Thiruchirappalli Region,
Thiruchirappalli.

+One cc to Mr.D.Shanmugaraja Sethupathi, Advocate, SR.No.52548

+One cc to The Special Government Pleader, SR.No.52778

cmr/gsp
RL/5C/5P/MMS/SAR1/30.5.2017

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