IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.No.1175 of 2017 and W.P.No.31544 of 2017

W.A.No.1175 of 2017

1 THE DIRECTOR OF CO-OP. AUDIT
TAMILNADU SLUM CLEARANCE BOARD BUILDING
KAMARAJAR SALAI
CHENNAI-5.

2 THE ASSISTANT DIRECTOR OF CO
OP. AUDIT NO.13 CHAIRMAN CHIDAMBARAM
STREET VILLUPURAM
VILLUPURAM DISTRICT. ... Appellant/Respondents

Vs

1 K.SUTHANDIRA MOHAN ... respondent /Petitioner

Appeal filed against the order passed by this Court dated 4.5.2017 passed in W.P.No.27015/2013.

WP.No.27015 of 2013:Calling for the entire records relating to the impugned order passed by the 1st 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 Cooperative Auditor and Cooperative Audit Officer by fixing the revision of payscales and disburse the medical leave salary and arrears of salary to the petitioner

W.P.No.31544 of 2017

K.Suthandira Mohan ... petitioner

Vs

1 The Secretary to Government
Finance (Cooperative Audit) Department Fort
St. George Chennai 600 009

2 The Director of Coop. Audit
Combined Finance Department Building No.571
Nandanam Anna Salai Chennai-35

3 The Assistant Director of Coop. Audit No.1013/A
V.G.P.Nagar
Vazhudhareddy Post New Bus Stand Near
Villupuram Villupuram District ...respondents

Writ Petition filed seeking for a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned letter issued by the 1st respondent in his letter No.64418/Ku.Tha/2014 dated 25.6.2015 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 Cooperative Auditor and Cooperative Audit Officer by fixing the revision of Pay scales and disburse the medial leave salary and arrears of salary to the petitioner.

For appearance:-

Mr.C.Manishankar, Additional Advocate General assist by

Mr.V.Jayaprakash Narayanan, Special Government Pleader, for 2nd appellant in W.A.No.1175 of 2017

Mr.D.Muthukumar for Mr.D.Anbarasan,
for respondent in W.A.No.1175 of 2017 and
for petitioner in W.P.No.31544 of 2017

Ms.T.Girija, Government Advocate for respondent
in W.P.No.31544 of 2017

COMMON JUDGMENT
(made by K.K.SASIDHARAN, J.)

The intra court appeal in W.A.No.1175 of 2017 is at the instance of the Director of Cooperative Audit and the challenge is to the order dated 4 May 2017 in W.P.No.27015 of 2013, allowing the Writ Petition and directing the appellants to consider the case of the respondent in the light of the exemption granted by the Government earlier.

2. The Writ Petition in W.P.No.31544 of 2017 is at the instance of the respondent in W.A.No.1175 of 2017 and challenge is to the order dated 25 June 2015 on the file of the Government, rejecting the request for granting exemption.

3. We have heard the learned special Government Pleader on behalf of the appellant and the learned counsel for the respondent who is also the counsel for the petitioner in W.P.No.31544 of 2017.

4. The petitioner in W.P.No.31544 of 2017 hereinafter referred to as the Writ Petitioner was appointed as a Junior

Assistant/Auditor on 25 July 1994. The post was subsequently redesignated as the Junior Cooperative Auditor. The post would come under the purview of the Tamil Nadu Public Service Commission.

5. The Writ Petitioner successfully completed the special test and his services were therefore regularized by the Government in G.O.Ms.No.445 Finance (Coop. Audit) Department dated 20 December 2005. Even though the services were regularized, still probation was not declared on the ground that the Writ Petitioner failed to pass the departmental examination in account test. The claim made by the Writ Petitioner for exemption was rejected.

6. The learned Single Judge found that the Government order in G.O.Ms.No.121 Finance dated 17 July 2013 contained a provision for exemption from passing the account test in case the employee made attempts at least five times for passing the test but failed in the attempt. Since the Writ Petitioner complied with the said condition, the learned Single Judge directed the appellant to consider his case for relaxation. The Government passed another order dated 25 June 2015, reiterating the very same contentions taken in the earlier order dated 17 July 2013 which was quashed by the learned single Judge in W.P.No.27015 of 2013 by order dated 4 Mary 2017.

7. There is no dispute that passing the account test is a pre-condition for declaring the probation. There is a provision for exemption which provides that in case the officer has made an attempt at least five times for passing the account test and his age must not be less than 53 years, he is entitled for exemption. The appellants have given exemption to similarly placed employees. In fact, the learned Single Judge referred to the earlier decision to arrive at a finding that the Writ Petitioner is eligible for relaxation.

8. The Government was expected to consider the case of the Writ Petitioner for relaxation on the basis of the order dated 4 May 2017 in W.P.No.27015 of 2013. The Government instead of considering the materials independently, reproduced the earlier order dated 17 July 2013 in the subsequent order dated 25 June 2015 and once again rejected the claim for exemption.

9. We have perused the documents available on record. The appellants have clearly admitted that Writ Petitioner made five attempts to pass the accounts test. However, he was not successful. He is aged 59 years now. Since the Writ Petitioner satisfied both the conditions for exemption, the Government was not correct in rejecting his claim. We are therefore of the view of the Writ Petition filed by the Writ Petitioner deserves to be

allowed.

10. The order dated 25 June 215 is set aside. The Writ Petition in W.P.No.31544 of 2017 is allowed. We direct the appellants to declare the probation of the petitioner with retrospective effect and grant him all the consequential benefits including promotion. However, we make it clear that Writ Petitioner is not entitled to the differential wages for the period in question.

11. The intra court appeal in W.A.No.1175 of 2017 is dismissed. The Writ Petition in W.P.No.31544 of 2017 is allowed as indicated above. No costs. Consequently, connected M.P.s, are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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V.G.P.Nagar
Vazhudhareddy Post New Bus Stand Near
Villupuram Villupuram District

+1 cc to Govt Pleader sr 20075,20077
+3 ccs to Mr.C.Prakasam Advocate sr19501.19207
+2 ccs to Mr.D.Anbarasan Advocate sr 19206





aa03/05/2018