

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.No.789 of 2015

and

M.P.No.1 of 2015

- 1.The State of Tamil Nadu
rep. by the Secretary to Government,
Personnel & Administrative Reforms
(Personnel R) Department,
Secretariat, Madras - 9.
- 2.The Registrar of Co-operative Societies,
Kilpauk, Madras - 10.
- 3.The Joint Registrar of Co-operative Societies,
O/o. The Registrar of Co-operative Societies,
Kilpauk, Madras - 600 010.

... Appellants/Respondents

versus

V.R.Krishnan (Died)

1.K.Chellammal

2.K.Gopinath

... Respondents/Petitioners

Prayer: Writ Appeal filed under clause 15 of the letter patent against the order passed by this Court dated 11.03.2014 passed in W.P.No.22885/2006.

Prayer in WP.No.22885/2006:Writ petition having been transferred from the file of the Tamil Nadu Administrative Tribunal in OA.No.4927 of 1996 is filed to call for the records on the file of the Registrar of Cooperative Societies Kilpauk Madras-10 in his proceedings Rc.No. 12049/96/EM 1 dated 26.7.96 and quash the same to the extent of the petitioner and direct the respondent to consider the case of the petitioner for promotion to the post of Junior Inspector with all monetary and service benefits by issuing a writ of certiorarified mandamus.

For Appellants : Mr.L.P.Shanmugasundaram,
Special Government Pleader

For Respondents : Mr.MA.P.Thangavel

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

This intra-Court appeal has been filed by the respondents in W.P.No.22885 of 2006 which was allowed by an order dated

11.03.2014. While quashing the proceedings of the 2nd respondent dated 26.07.1996, this Court had directed the respondents to consider the case of the petitioner in the Writ Petition for notional promotion to the post of Junior Inspector and grant all monetary and service benefits.

The facts leading to the filing of the Writ Petition are as follows:-

2. The petitioner in the Writ Petition was working as a Junior Assistant in the Office of Joint-Registrar of Co-operative Societies, Karur. His claim for promotion to the post of Junior Inspector of Co-operative Societies was not considered, since it was found that the petitioner did not possess the requisite educational qualification viz., Higher Secondary (+2) on the appropriate date.

3. The petitioner moved the Tamil Nadu Administrative Tribunal in O.A.No.3206 of 1996 seeking a direction to the respondent to consider his case in the light of G.O.Ms.No.219, Personnel and Administrative Reforms (Per R) Department dated 30.03.1988 with reference to the Government letter No.97044/Per.R/88-34 dated 06.03.1991. The Tamil Nadu Administrative Tribunal by an order dated 28.06.1996 directed the respondents to consider the claim of the petitioner for promotion. The said request came to be rejected by the Registrar of Co-operative Societies by his proceedings in RC.No.12049/96/EM 1 dated 26.07.1996. This led to the petitioner filing O.A.No.4927 of 1996 before the Tamil Nadu Administrative Tribunal questioning the order dated 26.07.1996. On the abolition of the Tribunal, the said O.A.No.4927 of 1996 was transferred to this Court and numbered as W.P.No.22885 of 2006.

4. Pending the above Writ Petition, the petitioner viz., V.R.Krishnan died and his legal representatives were brought on record by an order dated 08.10.2012. Thereafter, the final order came to be passed on 11.03.2014, which is the subject matter of challenge in this intra-Court appeal.

5. We have heard Mr.L.P.Shanmugasundaram, learned Special Government Pleader for the appellants and Mr.MA.P.Thangavel, learned counsel for the respondents.

6. The minimum general qualification for promotion to the post of Junior Inspector is completion of old SSLC i.e., 11th Standard. The petitioner though failed in the old SSLC, joined 2 years foundation course in Annamalai University and acquired first year foundation course qualification. On the strength of such qualification he was promoted from the post of Office Assistant to Junior Assistant. When it came to the promotion of the petitioner from the post of Junior Assistant to Junior Inspector of Co-operative Societies, the same was denied on the ground that he does not possess minimum general qualification.

7. In the order impugned in the Writ Petition, the basis on which the claim of the petitioner for promotion was rejected was that completion of first year of the foundation course conducted by Annamalai University was not recognized as equivalent to SSLC. G.O.Ms.No.219 dated 30.03.1988 recognizes the 2 years foundation course conducted by Annamalai University as an equivalent to Higher Secondary course (+2) for the purpose of entry into public services of the State Government. The said G.O was clarified by the letter dated 06.03.1991, stating that the first year foundation course is equivalent to pass in the first year of the 10 +2 course. Taking note of the above clarification, the learned Single Judge concluded that the denial of promotion to the petitioner during the year 1996 was not justified.

8. In this appeal, an additional affidavit has been filed by the 2nd appellant, wherein, it is stated that the Government by a subsequent G.O in G.O.Ms.No.50, Personnel and Administrative Reforms (Per R) Department, dated 21.02.1997 had issued orders stating that the first year foundation course of Annamalai University is equivalent to the old SSLC (11 years). Based on the above Government Order, the Government had issued orders to regularize the services of the petitioner as Junior Assistant with effect from 21.02.1997 i.e., the date on which the Government Order was issued. Since the services of the petitioner were regularized in the feeder category viz., Junior Assistant only with effect from 21.02.1997, it is claimed that the petitioner was not eligible for consideration for promotion as a Junior Inspector when the panel for promotion was drawn on 01.05.1995. Hence, his name was not included in the panel prepared for promotion as on 01.05.1995.

9. It is claimed that by the proceedings of the Registrar in RC.No.194654/2001/EM2 dated 12.01.2002, the petitioner's seniority was re-fixed from Sl.No.927 to Sl.No.1097. It is also claimed that no panels were prepared for promotion in the cadre of Junior Inspector of Co-operative Societies from 01.05.1996 to 01.05.2000 and from 01.05.2002 to 01.05.2005. For the panels prepared on 01.05.2001 and 01.05.2006 for the post of Junior Inspector, the petitioner did not come within the zone of consideration, in view of the revision of his seniority by the proceedings dated 12.01.2002. Therefore, according to the respondents, the learned Single Judge was not justified in directing promotion of the petitioner.

10. Mr.MA.P.Thangavel, learned counsel appearing for the respondents would however contend that the petitioner possessed the requisite qualification when the panel was drawn on 01.05.1995. Unfortunately, his claim for promotion was not considered because of the fact that a pass in the 1st year of the foundation course conducted by the Annamalai University was not

considered to be equivalent to 11th Standard (Old SSLC) as on that date. In view of the G.O.Ms.No.50 dated 21.02.1997, the qualification possessed by the petitioner was treated as equivalent to 11th Standard (Old SSLC). Therefore, according to the learned counsel, the petitioner though was qualified for promotion as on 01.05.1995 was denied promotion and therefore, according to him, the learned Single judge was justified in directing the authorities to promote the petitioner notionally with all statutory and monetary benefits.

11. The fact that the petitioner possessed the requisite qualification as on 01.05.1995 when the panel was drawn is not in dispute. The petitioner's name was not included in the panel because the Authorities considered that the educational qualification of the petitioner viz., completion of first year of the 2 year foundation course conducted by Annamalai University was not equivalent to old SSLC (11th Standard). Subsequently, the Government had recognized the said qualification possessed by the petitioner as equivalent to old SSLC by G.O.Ms.No.50 dated 21.02.1997. Therefore, basis or the premise on which the petitioner was not considered for promotion when the panel was drawn on 01.05.1995 ceased to exist. Considering the same, the petitioner's services were also regularized in the post of Junior Assistant with effect from 21.02.1997. It is therefore clear that the petitioners name was not included in the panel for promotion as Junior Inspector of Co-operative Societies even though he possessed the required qualification.

12. To our pointed query as to whether any of the juniors of the petitioner were promoted as per the panel prepared on 01.05.1995. The learned counsel for the appellant would fairly submit that in fact some of the juniors of the petitioner were promoted as Junior Inspector of Co-operative Societies based on the panel drawn on 01.05.1995. Therefore, it is just and proper that the petitioner should also be given benefit of such promotion at least on a notional basis as the petitioner is no more now and he is being represented by his legal representatives. Therefore, we do not find any error in the order of the learned Single Judge directing notional promotion to the petitioner to the post of Junior Inspector with effect from 18.03.1996 i.e., the date on which his juniors were promoted. While doing so, the learned Single Judge has also directed grant of all monetary and service benefits to the petitioner.

13. Mr.L.P.Shanmugasundaram, learned Special Government Pleader would contend that the learned Single Judge was not right in directing promotion with all monetary and service benefits with effect from 18.03.1996. Admittedly, the petitioner has not worked in the post of Junior Inspector of Co-operative Societies even for a single day. Therefore, he cannot claim

salary on the basis of the notional promotion which is granted to him now. Therefore, his legal representatives cannot claim salary on the basis of the notional promotion that was granted by the order of the learned Single Judge. We see much force in the above plea of the learned Special Government Pleader.

14. We therefore make it clear that the respondents would be entitled to the statutory and monetary benefits on the basis of the notional promotion without salary. Hence, the Writ Appeal is partly allowed, the direction to grant promotion to the deceased 1st respondent with effect from 18.03.1996 is upheld. However, we set aside the direction to pay monetary benefits for the period in question. In short, the promoted service would be calculated for all other purposes except for salary for the period in question. Such exercise shall be completed within a period of three months from the date of receipt of a copy of the judgment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dsa
To

- 1.The Secretary to Government,
Personnel & Administrative Reforms
(Personnel R) Department,
Secretariat, Madras - 9.
- 2.The Registrar of Co-operative Societies,
Kilpauk, Madras - 10.
- 3.The Joint Registrar of Co-operative Societies,
O/o. The Registrar of Co-operative Societies,
Kilpauk, Madras - 600 010.

+1cc to Government Pleader Sr.No.32245
+1cc to Mr.MA.P.Thangavel, Advocate Sr.No.31425

SSV(CO)
sm:16.5.2018

W.A.No.789 of 2015