

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.19804 of 2012

S.R.Muralikrishnan

.. Petitioner

Versus

1. The State of Tamil Nadu,
Rep by the Registrar of
Co-operative Societies,
N.V.N. Natarajan Maaligai,
Kilpauk, Chennai -10.

2. The Joint Registrar of
Co-operative Societies,
Salem Region, Salem.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned Orders passed by the first respondent in proceeding RC.126776/2010/EM1 dated 10.08.2011 and in proceeding Na.Ka.77695/2011/Pa.Tho.1 dated 08.06.2012 and quash these orders and consequently direct the respondents to include the name of the petitioner in the approved panel as on 01.05.2010 published in proceeding dated 04.08.2011 in accordance with his seniority and promote him to the post of Co-operative Sub Registrar on par with his immediate junior with all monetary and consequential service benefits.

For Petitioner : Ms.Swadhi Subramaniam

For Respondents : Mrs.T.Girija
(Government Advocate)

O R D E R

The writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned Orders passed by the first respondent in proceeding RC.126776/2010/EM1 dated 10.08.2011 and in proceeding Na.Ka.77695/2011/Pa.Tho.1 dated 08.06.2012 and quash these orders and consequently to direct the respondents to include the name of the petitioner in the approved panel as on 01.05.2010

published in proceeding dated 04.08.2011 in accordance with his seniority and promote him to the post of Co-operative Sub Registrar on par with his immediate junior with all monetary and consequential service benefits.

2. The petitioner is working as Senior Inspector, Co-operative Societies on deputation under the control of the Deputy Registrar of Co-operative Societies (Diarying), Salem-7. He claimed that he was fully qualified for promotion to the post of Co-operative Sub Registrar. The date of the approved panel was 01.05.2010. This was released by the first respondent namely the Registrar of Co-operative Societies, Chennai, on 04.08.2011. His name was not found in the said list.

3. The petitioner has challenged the order dated 10.08.2011. By order dated 10.08.2011, the Registrar of Co-operative Societies, the first respondent had informed the petitioner that though the petitioner's name was considered for inclusion in the regular panel of Senior Inspector of Co-operative Societies fit for promotion as Co-operative Sub Registrar on 01.05.2010, since three surcharge orders of Deputy Registrar(Housing), Salem dated 14.05.2008, 22.01.2010 and 04.02.2010 were pending, the name of the petitioner was deferred from inclusion in the panel. This order have been challenged by the petitioner in the present writ petition.

4. He had thereafter given a representation on 23.08.2011. It is also informed that on 13.02.2012, charges under Section 17 (b) of the Tamil Nadu Government servants Conduct and Appeal Rules were also framed against him.

5. Heard, Ms.Swadhi Subramaniam, learned counsel for the petitioner and Mrs.T.Girija, Government Advocate for Co-operative Societies.

6. In the counter affidavit, it is revealed that vouchers and payments and Society receipts were cancelled and misappropriated by the petitioner and there was no amount available when the petitioner was working as Supervisor in Rasipuram Taluk Co-operative Housing Society. It was stated that building rent payments were misappropriated. It was also stated that consequently surcharge notices had been issued to the petitioner on 14.05.2008, 22.01.2010 and 04.02.2010.

7. In this connection, a reference can be made to G.O.(Ms). No.368 Personnel and Administrative Reforms Department, dated 18.10.1993. This Government order related to preparation of panel for appointment by promotion/recruitment by transfer. Detailed instructions were issued by the said Government Order. In the said Government order relating to Preparation of Panels,

it had been provided as follows:

II. Preparation of panels :-

(iv) "..... Classification of persons against whom enquires are pending and specific charges have been framed or charge sheet has been filed in criminal cases:- (1) As per orders in the Government order sixth read above, in the case of pending enquiries including Vigilance enquiries and in cases where specific charges have not been framed, promotions and appointments shall be considered on the basis of the performance of the officers coming under the Zone of selection as on the date of consideration for promotion/appointments as revealed through the Personal Files/Records sheets and the seriousness of the punishments, if any previously imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case, promotion/appointment of such persons shall 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 with reference to all relevant criteria, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted."

8. In the case of the petitioner, on the crucial date namely 01.05.2010, the three surcharge proceedings alone were pending. Charges were not framed. They were framed only in the year 2012. A careful reading of the provision states that when enquiries are pending and specific charges have been framed or charge sheet has been filed in criminal cases, even then, on the basis of the performance of the officers coming under the zone of selection, and the seriousness of the punishments, the names can be included.

9. In the present case as on 01.05.2010, only surcharges were pending. Even in the proceedings which culminated in the 17 (b) charges, it had been stated that the petitioner had been imposed punishment of cut of increment for six Months without cumulative effect. Again that order was passed only on 11.01.2018. The crucial aspect is that on the date when the promotion panel was drawn, there were no charges under Section 17(b) pending against the petitioner. Taking these factors into consideration, the point stressed by the learned counsel for the petitioner that the second impugned order dated 08.06.2012 should be quashed deserves favourable consideration. By this

order, it had been stated that since charges are pending under Section 17(b), the petitioner cannot be promoted. But as noted above, only surcharge proceedings were pending against the petitioner and on that ground, promotion cannot be denied.

10. In view of these factors, the writ petition is allowed as prayed for. The respondents are directed to fix the seniority of the petitioner and promote him in accordance with Rules. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vkrr/msvm

To

1. The State of Tamil Nadu,
Rep by the Registrar of
Co-operative Societies,
N.V.N. Natarajan Maaligai,
Kilpauk, Chennai 10.

2. The Joint Registrar of
Co-operative Societies,
Salem Region, Salem.

+1 cc to Mr.R.Prem Narayan, Advocate Sr.No.77922

+1 cc to The Government Pleader, Sr.No.78343

सत्यमेव जयते

W.P.No.19804 of 2012

VBA(CO)
CSL/04.12.2018

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