

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.2.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.26749 of 2011&
M.P.No.1 of 2011

D.Kannappan

.. Petitioner

versus

1. The Registrar of Co-operative Societies,
No.170 EVR Periyar Salai,
Kilpauk, Chennai-600 010.

2. The Joint Registrar of Co-operative Society,
Coimbatore. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for records relating to the first respondent's order made in proceedings in Rc.1716.2011 EM.1 dated 25.2.2011, quash the same and consequently direct the respondents to promote the petitioner as Co-operative Sub Registrar, from the date on which his immediate junior was promoted as such with all benefits both service and monetary.

For Petitioner : Mr. M.L.Chandrakumar

For Respondents: Mr.L.P.Shanmughasundaram.
Spl.G.P.

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for records relating to the first respondent's order made in proceedings in Rc.1716.2011 EM.1 dated 25.2.2011, quash the same and consequently direct the respondents to promote the petitioner as Co-operative Sub Registrar, from the date on which his immediate junior was promoted as such with all benefits both service and monetary.

2. According to the petitioner, he was appointed as Junior Inspector of Cooperative Society on 16.6.1996 and based on the special qualifying examination, his services came to be regularized with effect from 15.10.1989. Later, he was promoted as Senior Inspector of Co-operative Society on 3.9.1996. The next avenue of promotion is to the post of Co-operative Sub-Registrar. The grievance of the petitioner is that though he is qualified and fit for promotion, he was not considered for promotion in view of pendency of disciplinary proceedings in respect of 17(b) charges. Earlier, the disciplinary proceedings were dropped by proceedings dated 31.5.2005. However, later, 17 (b) charge memo was issued by the first respondent by invoking suo motu revision. After enquiry, the petitioner was imposed with a punishment of a stoppage of increment for one year without cumulative effect by proceedings dated 12.2.2009. It appears that since the claim of the petitioner was not considered, he moved a writ petition in W.P.No.16338 of 2010, wherein, this Court directed the respondents to consider the claim of the petitioner for promotion. Pursuant to the same, the first respondent by proceedings dated 25.2.2011, rejected the claim of the petitioner for promotion on the ground that there was currency of punishment on the crucial date. Aggrieved by the same, the petitioner has come forward with the present writ petition.

3. Upon notice, Mr.L.P.Shanmughasundaram, learned Special Government Pleader entered appearance for respondents and filed a detailed counter affidavit. He would submit that though earlier the charges framed under Rule 17(a) against the petitioner were dropped, however, the first respondent, being the Head of the Department, after perusal of the record, suo motu reviewed the matter and opined that dropping of charges against the petitioner was not in commensurate with the gravity of the charges and accordingly had initiated the disciplinary proceedings, which culminated into imposition of punishment of stoppage of increment for one year without cumulative effect. The said order of punishment was passed on 12.02.2009 and the crucial date for promotion was 1.5.2009. Therefore, as the punishment was in currency on the crucial date, the petitioner was not included for promotion. He would further submit that as per the Government Letter No.52716/s/1999-1 Personnel Administrative Reforms (S) Department, dated 1.01.1999, it has been instructed that whenever an officer is undergoing any punishment other than censure on the crucial date or on the date of consideration then irrespective of the time of occurrence of the irregularity, his name should be passed over for that period. As such, since the punishment of stoppage of increment was given effect from 1.7.2009 to 30.6.2010 and it was in currency during the consideration of the panel on 1.5.2009, the petitioner's name was passed over for the said period.

Therefore, the learned Special Government Pleader would submit that there is no merit in the writ petition and the same is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the learned Spl.Government Pleader and perused the materials available on record.

5. In fact, earlier there were G.Os., and instructions by way of Government Letters, imposing an embargo on a person who had suffered a punishment for being considered for promotion. Of them, two such G.Os., are viz., G.O.Ms.No.368, (P&AR) Department, dated 18.10.1993 and G.O.Ms.No.248 (P&AR) Department dated 20.10.1997. These G.Os., along with related Government Letters came to be challenged in a batch of Writ Appeals and Writ petitions, viz., W.A.(MD) Nos.315 of 2011 etc., and the Full Bench of this Court, has categorically held that the embargo put on the right of the Government servant for being considered for promotion for a further period, after the period minor punishment is over in the name of check period, that is one year in the case of censure and five years in the case of other minor punishment is illegal and impermissible under the statutory rules. The said decision has also been reported in "(2011) 3 CTC 129 (FB) (The Deputy Inspector General of Police, Thanjavur Range, Thanjavur versus V.Rani)". It is to be noted that the Full Bench has quashed the said G.Os., and other Government Letters, having held that they were only in the form of administrative instructions issued by the Government, which have no statutory force and therefore, they cannot be equated to the statutory rules.

6. After the pronouncement of the Full Bench judgment, the Government brought the earlier Government Orders and Letters relating to the promotion are given statutory effect by way of G.O.Ms.No.22, dated 24.2.2014, with retrospective effect by amending the Rule 4(a) of the General Rules for the Tamil Nadu State and Subordinate Services. Thereafter, after issuance of the said G.O., in order to streamline recruitment of Government servants and their services in various departments, the State Government has brought into force the Act, called 'Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Sections 11 and 15 of Schedule-XI Part-A of the Act are relevant and it is extracted as under:

"11. Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be

considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment."

"12. to 14.

"15. No member of service shall be promoted or appointed to a post if the member is undergoing any punishment imposed under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion."

7. It is not in dispute that as on the crucial date, i.e. 01.05.2010, the petitioner was undergoing punishment. Therefore, in view of the above provisions, the petitioner is not entitled to be considered for promotion to the next post. When an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently.

8. In fact, in the decision cited supra in "The Deputy Inspector General of Police, Thanjavur Range, Thanjavur versus V.Rani", the Full Bench of this Court has categorically held in para 28(1) as under:

"28(1). During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in "Subramanian v. Government of Tamil Nadu" rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible."

9. In view of the above, the petitioner cannot claim as a matter of right to be promoted to the next category during the period of currency of punishment merely on the basis that he is otherwise fit for promotion. However, after the currency of punishment period, he is certainly entitled. It is brought to the notice of this Court that after currency of punishment period, the petitioner's name was included in the promotion panel on 01.5.2011 and consequently promoted as Co-operative Sub Registrar on 28.09.2012.

10. For the fore going discussion, there is no merit in the writ petition and accordingly, the Writ Petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operative Societies,
No.170 EVR Periyar Salai,
Kilpauk, Chennai-600 010.

2. The Joint Registrar of Co-operative Society,
Coimbatore.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.11361

+1cc to the Government Pleader, S.R.No.11744

W.P.No.26749 of 2011

RRK(16/04/2018)