



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 14.11.2018

DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P (MD) No.457 of 2015

1.M.Ramalingam

2.K.Rajasekaran

3.C.Rajendran

.. Petitioners

Vs.

1.The Secretary to Government,
Cooperative & Consumer Protection
(CE-1) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Registrar,
Cooperative Societies,
Kilpauk, Chennai - 600 010.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in G.O.(2D)No.52, dated 25.08.2014 and quash the same and consequently direct the respondents to effect notional promotion to the petitioners in the post of Joint Registrar of Cooperative Societies and to refix the pensionary benefits of the petitioners in the cadre of Joint Registrar of Cooperative Societies from the date of retirement and also all monetary benefits of the petitioners with interest and pass such further or other orders.

For Petitioners

: Mr.Veera Kathiravan
Sr. counsel for Mr.C.Jegannathan

For Respondents

: Mr.J.Gunaseelan Muthiah,
Addl. Government Pleader.

ORDER

This writ petition has been filed praying to call for the records relating to the impugned order of the first respondent in G.O.(2D)No.52, dated 25.08.2014, quash the same and consequently direct the respondents to effect notional promotion to the petitioners in the post of Joint Registrar of Cooperative Societies



and refix the pensionary benefits of the petitioners in the cadre of Joint Registrar of Cooperative Societies from the date of retirement and also all monetary benefits of the petitioners with interest, by way of issuing a writ of Certiorari Mandamus.

2. Heard the learned senior counsel appearing for the petitioners as well as the learned Additional Government Pleader representing the respondents.

3. The case of the petitioners is as below:

(i) The writ petitioners herein are retired Deputy Registrar of Cooperative Societies/Chief Revenue Officer, MDDC Bank. Their grievance exposed in the present writ petition is that the first and third petitioner joined in service as Junior Inspectors and the second petitioner joined in service as Senior Inspector way back in 1974, 1977 and 1974 respectively. During the course of their service, they have been periodically promoted and attained superannuation, while serving as Deputy Registrars.

(ii) Though their names were included in the panel for the year 2010-2011 to the post of Joint Registrar of Cooperative Societies, the promotion was not given effect to, for the reason that the appointment of few directly recruited Deputy Registrars, whose name found above the writ petitioners in the panel was under challenge and the matter was pending before the Hon'ble Supreme Court in Special Leave Petition, the request of the petitioners who all were from the cadre to consider their name for promotion independently to the post of Joint Registrar could not be considered. The SLP which was referred by the first respondent is in respect of direct recruitment of Deputy Registrars, there was no legal impediment for considering the names of the writ petitioners, for promotion who fall under the other wing of the feeder category, namely rank promotives.

(iii) The reason assigned by the first respondent for not approving the panel and giving promotion to the writ petitioners as Joint Registrars is not legally sustainable. The promotion of the petitioners as Joint Registrars was denied citing pendency of Special Leave Petition which has no relevancy. It has caused irreparable damage to the petitioners, since they all retired without promotion despite possessing requisite experience and qualification and being empanelled in the promotion list.

(iv) The first respondent who has earlier denied promotion to the petitioners citing pendency of SLP vide his letter dated 22.06.2011, after retirement of the petitioners herein gave promotion to the juniors who were in service despite the SLP regarding the recruitment of the direct Deputy Registrars was pending. Within a period of eight months, the first respondent has reconsidered their earlier decision of not giving effect to the promotional panel. Due to the said inaction based on wrong decision taken earlier, a collateral damage has been caused to the



petitioners herein and therefore they must be given notional promotion par with the juniors who were promoted as Joint Registrars.

(v) It is submitted by the petitioners herein that the representation given by them to the first respondent to consider their request to promote them as Joint Registrar notionally and refix the pensionary benefits in the cadre of Joint Registrar, Cooperative Societies, was not considered by the first respondent. Hence, they filed W.P(MD)No.16880 of 2012 before the Hon'ble Madurai Bench of Madras High Court. This Court considering the plea and has passed the following order:

"Considering the above, without expressing any opinion on the merits of the case, a direction is issued to the first respondent to consider the claim of the petitioners and pass appropriate orders, in the light of the Government Orders, issued in G.O.Ms.No.30, Co-operative, Food and Consumer Protection Department, dated 25.02.2011, G.O.Ms.No.1, Co-operative, Food and Consumer Protection Department, dated 23.02.2012, as well as Rule 39(a)(1) of the General Rules for the Tamil Nadu State and Subordinate Service Rules, for grant of notional promotion to the petitioners. The said exercise shall be completed, within a period of six weeks from the date of receipt of a copy of this order".

(vi) The first respondent pursuant to the direction passed by this Court in W.(MD)No.16880 of 2012 dated 29.04.2014, has considered the representation of the writ petitioners and rejected their claim vide G.O.(2D)No.52, Co-operative, Food and Consumer Protection (CE1) Department, dated dated 25.08.2014. The operative portion of the impugned order reads as follows:

"In the letter sixth read above, the Registrar of Co-operative Societies has furnished his specific remarks on the above orders of the Hon'ble Madurai Bench of Madras High Court wherein the Registrar of Co-operative Societies has stated that Tvl.M.Ramalingam, K.Rajasekaran and C.Rajendran, Deputy Registrars of Cooperative Societies (Retired) have retired from Government service on 31.07.2011, 31.07.2011 and 30.11.2011 respectively on superannuation. The W.P.No.16880/2012 has been filed by these retired Deputy Registrars only on March 2012, after they retired from Government Service. After the date of their retirement, their services were ceased. At the time of temporary promotion given, as per rule 39(a)(i) of the General rules for the Tamil Nadu State and Sub-ordinate Services Rules vide G.O.(4D)No.1, Cooperation, Food and Consumer Protection (CE1) Department, dated 23.02.2012, nobody in the promoted list can be termed as Junior to the petitioners, as the petitioners were not in service on 23.02.2012. The above petitioners cannot cite the panel approved in G.O.(Ms)No.30, Cooperation, Food and Consumer Protection Department dated 25.02.2011 to claim their



promotion, as the said panel was not acted upon. Therefore, the Registrar of Co-operative Societies has requested the Government to issue suitable orders on the representations of Tvl.M.Ramalingam, K.Rajasekaran and C.Rajendran, Deputy Registrars of Cooperative Societies (Retired) as directed by the Hon'ble Madurai Bench of Madras High Court vide its order dated 29.04.2014".

(vii) The said order is impugned in this writ petition seeking a writ of Certiorarified Mandamus to call for the records relating to the impugned order, quash the same and consequently direct the respondents to effect notional promotion to the petitioners in the post of Joint Registrar of Cooperative Societies and other consequential benefits.

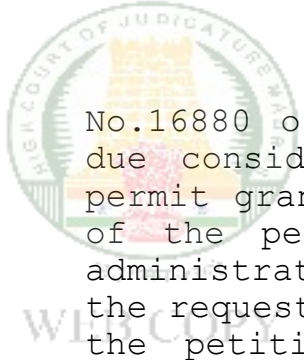
4.The respondents have filed counter, wherein it is stated as below:

(i)The petitioners herein were promoted as Deputy Registrars of Cooperative Societies on 01.12.2006. The next avenue of promotion for them was Joint Registrar. For the year 2010-2011, a panel of Deputy Registrars fit for promotion was prepared and approved by the Government vide G.O.Ms.No.30, Cooperation, Food and Consumer Protection (CE-1) Department, dated 25.02.2011. 26 Deputy Registrars name were short-listed. The petitioners were included in the list at Serial No.18 Ramalingam, Serial No.14, Rajasekaran and Serial No.19, Rajendran. Out of 26 persons included in the panel, candidates in Serial Nos.1 to 15 were directly recruited as Deputy Registrars by TNPSC in the year 2000-2001.

(ii)The Hon'ble High Court, vide common order, dated 04.03.2011 made in W.A.No.1063 of 2009 and W.A.No.1289 of 2009, set aside the selection and appointment of 83 candidates in Group I Service, in which the candidates found in Serial Nos.1 to 13 were among them. The said order was challenged before the Hon'ble Supreme Court and was pending during the finalisation of panel vide G.O.Ms.No.30, dated 25.02.2011 referred above.

(iii)When the promotion to the post of Joint Registrar was about to be implemented based on the panel, opinion of the Additional Advocate General was obtained and due to uncertainty of the outcome of the Special Leave Petition, the Government decided to fill up the vacancy of the posts of Joint Registrar temporarily. 4 promoted Deputy Registrars who were in service at the time, were temporarily promoted as Joint Registrars as per Rule 39(i)(a) of the General Rules for the Tamil Nadu State and Subordinate Service Rules subject to certain conditions vide G.O.(4D)No.1, dated 23.02.2012. By that time, the petitioners herein have attained superannuation and retired. Hence, the request for granting notional promotion to the petitioners to the post of Joint Registrars on the date of their retirement and refix the pensionary benefits in the cadre of Joint Registrar of Cooperative Society, will not arise.

5.The petitioners herein approached this Court in W.P(MD)



No.16880 of 2012 seeking to consider their representation. After due consideration of the representation, since the law does not permit granting notional promotion to the retired petitioners ahead of the persons, who were promoted temporarily to meet out the administrative exigencies, the impugned order was passed rejecting the request. 13 directly recruited Deputy Registrars were senior to the petitioners herein, since their very appointment was under challenge and subject matter of Special Leave Petition, Government was not in a position to give effect to the panel prepared for the year 2010-2011, which got lapsed. Without giving promotion to the seniors to the petitioners, the Department was not in a position to give effect to the panel prepared under G.O.Ms.No.30. Thereafter only temporary promotion was given to meet out the exigency and long after that the promoted Deputy Registrars as Joint Registrars were made permanent. Temporary promotion made as per Rule 39(i)(a) of the General Rules for the Tamil Nadu State and Subordinate Service Rules, cannot be a reason for the petitioners herein to claim that if the Government had taken a decision of promoting Deputy Registrars as Joint Registrars pending special Leave Petition, immediately after drawing the panel, the petitioners would have promoted as Joint Registrars.

6. The perusal of the pleadings and the connected records discloses that G.O.Ms.No.30, dated 25.02.2011 contains the list of eligible candidates fit for promotion as Joint Registrars in the Co-operative Department. It carries 26 names including the writ petitioners as persons who are eligible for consideration to the post of Joint Registrars. It was only a tentative list published for the information and to invite objections as per General Rule 4 (a). The number of vacancies in the post of Joint Registrar on the date of drawing panel is not available either in the G.O. or in the affidavit of either parties. Be that as it may, mere publication of tentative list disclosing persons fit for promotion will not give absolute right of promotion.

7. From the communication of the Secretary to the Government to the writ petitioners Ramalingam and Rajasekaran, this Court finds that immediately after drawing the panel vide G.O.Ms.No.30, dated 25.02.2011, the writ petitioners have sought for considering their names for promotion as Joint Registrars excluding the names of the candidates found in Serial Nos.1 to 13. Since their appointment itself was set aside by the High Court vide order dated made in W.A.No.1063 of 2009 and W.A.No.1287 of 2009 on the ground of malpractice in exam. In response to the said request, the Secretary to the Government has informed the writ petitioners that though the High Court has set aside the appointment of directly recruited Deputy Registrars whose names are found in Serial Nos.1 to 13, the TNPSC has preferred Special Leave Petition before the Hon'ble Supreme Court and the same is pending. Further the turn for promotion for the petitioners has not reached, so their request to consider their names for promotion as Joint Registrars has not been considered. Thus, it is very clear from the communication that though the names of the petitioners were empanelled in the list



during the month of June 2011, they have not reached the turn for promotion. 13 of their seniors who were appointed directly were entangled in litigation, hence, the Department was not in a position to accede their request.

8. The reasoning for not considering their request and the policy decision of the Government at that point of time to wait for the disposal of the Special Leave Petition, since 13 of the Deputy Registrars selection was under dispute. The perusal of the subsequent G.O.(4D)No.1, dated 23.02.2012 giving effect temporary promotion of 4 Deputy Registrars as Joint Registrars under General Rule 39(a)(i) indicates that it was issued to meet out urgent exigencies since one Thiru.K.Jegannathan posted as Joint Registrar at Nagapattinam Zone and Smt.R.Chitra posted as Joint Registrar/Special Officer, Kanchipuram District Central Cooperative Bank, did not joint duty and the posts of Joint Registrar, Thiruvarur Zone and Kanyakumari Zone were vacant, 4 Deputy Registrars were temporarily promoted.

9. At that time, the 13 directly recruited Deputy Registrars whose appointment was under challenge before the Hon'ble Supreme Court were not considered for temporary promotion and the same has also been stated in the said G.O. Further a reading of this G.O. reveals that it was only a temporary arrangement to meet out urgent exigencies and issued under Rule 39(a)(1) of the Tamil Nadu State and Subordinate Service (General) Rules. The temporarily promoted Deputy Registrars were specifically informed that this temporary promotion will not give them any priority seeking the promoted post and they cannot seek any priority in the promotional panel to be prepared subsequently. It is also made very clear in the said G.O. that the temporarily promoted Deputy Registrars can be reverted back from the position of Joint Registrar without any notice or reason.

10. In the above said circumstances, the writ petitioners herein who have attained superannuation before the temporary promotion of their juniors as Joint Registrars cannot seek notional promotion based on ifs and buts. In the course of administrative action, more particularly when the service of the candidates involved is under judicial scrutiny by way of Special Leave Petition, one cannot expect to effect the panel enlisted for promotion, without leave of the Court or at the risk of inviting the wrath of the Court. Only after getting adequate legal advise as found in the counter, the first respondent has though fit to temporarily promote four persons without considering the seniority of 13 directly recruited Deputy Registrars. It is only a temporary arrangement to meet out the exigency which has not given any lien even to the promoted persons. While so, a person who has already retired from service, by no stretch of imagination can expect a notional promotion and seek for monetary benefit.



reported in AIR 1987 SC 331, wherein the scope of exercising writ jurisdiction has been discussed and the same is as below:

"It is well-settled that a writ of mandamus is not a writ of course or a writ of right, but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance".

12. In *Mani Subrat Jain and Others v. State of Haryana and Others* reported in AIR 1977 SC 276, the Hon'ble Supreme Court has held as below:

"It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsburty's Laws of England 4th Ed. Vol.1, paragraph 122 : *State of Haryana v. Subash Chander Marwaha and Ors.*, *Jeabbai Matibhai Desai v. Roshan Kumar Haji Bashir Ahmed and Ors.*

MANU/SC/0011/1975 : [1976]3 SCR 58 and *Ferris* Extraordinary Legal Remedies paragraph 198".

13. If the impugned order is to be tested on the other parameter whether there is improper exercise of discretion while not proceeding with the promotion panel earlier and reconsidering the decision later without any change in the circumstances, when there is no *mala-fide* or colourable exercise of power, a pure administrative decision, cannot be faulted. Further, the subsequent action of promoting three persons who were in service was only on temporary basis. This Court therefore finds that the petitioners herein had no right to seek mandamus under the statute seeking parity with their juniors who were promoted after the petitioners retirement. Further the refusal of the respondent to exercise the discretionary power in favour of the petitioner does not bristle with infirmity or illegality.

14. It is true that the legal entanglement of their seniors in the panel has caused delay in taking decision by the State. No one has been deprived the petitioners from being considered for promotion in time. Even if it so, in a public office, such collateral damages are inevitable. Even on sympathetic reason, the



Court cannot extend the relief sought at the cost of public exchequer. Therefore, this writ petition is dismissed. No costs.

Sd/

Assistant Registrar(Crl Side)

/True copy/

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Sub Assistant Registrar(CS-IV)

To

1.The Secretary to Government,
Cooperative & Consumer Protection
(CE-1) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The Registrar,
Cooperative Societies,
Kilpauk, Chennai - 600 010.

+1cc to M/s.VEERA ASSOCIATES, Advocate, SR.No.96087

W.P (MD) No.457 of 2015
19.11.2018

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