



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Wednesday, the Nineteenth day of September Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN

WMP(MD) Nos.9073 and 1499 of 2016

IN

WP(MD) No.1734 of 2016

1 THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
170 EVR PERIYAR SALAI, KILPAUK,
CHENNAI-10

2 THE MANAGING DIRECTOR/
JOINT REGISTRAR OF COOPERATIVE SOCIETIES,
DINDIGUL CENTRAL COOPERATIVE BANK LIMITED
KOOTURUVU NAGAR, TRICHY ROAD, DINDIGUL-624005

3 THE PRESIDENT,
DINDIGUL CENTRAL COOPERATIVE BANK LIMITED,
KOOTURAVU NAGAR, TRICHY ROAD,
DINDIGUL - 624005

... PETITIONERS/RESPONDENTS/RESPONDENTS
IN WMP(MD) No.9073/2016
...RESPONDENTS/RESPONDENTS
IN WMP(MD) No.1499/2016

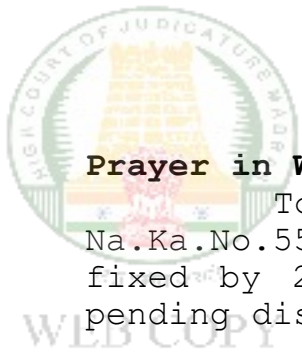
Vs

1 S.KADALKANNAN
2 S.MUTHUVEL
3 P.KASILINGAM
4 G.SHANMUGA SUNDARAM
5 A.MANICKKARAJ
6 D.ARUNKUMAR
7 V.KANIMOZHI
8 P.VELMURUGAN
9 G.JEYABALAN

... RESPONDENTS/PETITIONERS/PETITIONERS
IN WMP(MD) No.9073/2016
... PETITIONERS/PETITIONERS
IN WMP(MD) No.1499/2016

PRAYER IN WMP(MD) No.9073/2016 IN WP(MD) No.1734/2016:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to vacate the itnerim stay granted in WMP(MD) No.1499 of 2016 WP(MD) No.1734 of 2016 dated 28.01.2016.

**Prayer in WMP(MD)No.1499/2016 IN WP(MD)No.1734/2016:**

To grant stay against the circular of the 1st respondent in Na.Ka.No.55158/2010/ktg1 dated 21.09.2015 and the seniority list fixed by 2nd respondent in Na.Ka.No.87/2009-10/g1 dated 11.3.2014 pending disposal of the WP.

Prayer in WP(MD) .1734/2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent circular in Na.Ka.No.55158/2015/ktg1 dated 21.09.2015 and the seniority list fixed by 2nd respondent in Na.Ka.No.87/2009-10/g1 dated 11.3.2014 and quash the same and direct the 2nd respondent to fix the seniority list based on the merits and prepare the seniority list based on the marks obtained in their appointments.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of MR.K.CHELLAPANDIAN, Additional Advocate General assisted by MRS.S.SRIMATHI, Special Government Pleader for the 1st Petitioner in WMP(MD)No.9073/2016 IN WP(MD)No.1734/2016 AND the 1st Respondent in WMP(MD)No.1499/2016 IN WP(MD)No.1734/2016 and MR.D.SHANMUGARAJA SETHUPATHY, Advocate for the 2nd & 3rd Petitioner in WMP(MD)No.9073/2016 IN WP(MD)No.1734/2016 AND the 2nd & 3rd Respondent in WMP(MD)No.1499/2016 IN WP(MD)No.1734/2016 and of MRS.D.GEETHA for MR.V.O.S.KALAISELVAM, Advocate for the Respondents in WMP(MD)No.9073/2016 IN WP(MD)No.1734/2016 and the Petitioners in in WMP(MD)No.1499/2016 IN WP(MD)No.1734/2016, the court made the following order:-

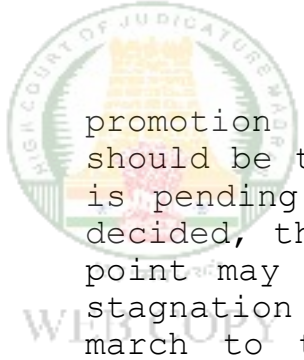
The above miscellaneous petition has been filed praying to vacate the interim stay granted by this Court in W.M.P.(MD)No.1499 of 2016 in W.P.(MD)No.1734 of 2016, dated 28.01.2016.

2. Mr.K.Chellapandian, Learned Additional Advocate General, assisted Ms.S.Srimathi, learned Special Government Pleader, takes Notices for the respondents.

3 For the purpose of the vacate stay petition, the following facts are narrated and as the main matter has got to be heard at length, this Court is not traverse into various factual aspects of the matter.

4. The sum and substance of the issue on hand is whether interse seniority must be determined based on merit list or seniority has got to be fixed in terms of roster point.

5. Mr.K.Chellapandian, the learned Additional Advocate General appearing for the vacate stay petitioners would contend that in view of the interim order granted by this Court on 28.01.2016, the



promotion process is stalled and that whether the roster point should be there with regard to seniority, is the subject matter that is pending before the Supreme Court. Till such time the issue is decided, the existing practice of granting promotion based on roster point may be permitted to continue so that there will not be any stagnation of the candidates in the present post and that they will march to the higher post by way of promotion, which could be subject to the result of the SLP that is pending before the Supreme Court.

6. The contention of Mr. Shanmugaraja Sethupathi, the learned standing counsel for respondents 2 and 3 is that, in terms of Rule 149(3) of the Tamil Nadu Co-operative Societies Rules, 1984, the appointments have got to be made based on roster system and the same principle has got to be extended to the promotion also otherwise it will create a confusion and that roster point system itself would be defeated. For the sake of convenience, Rule 149(3) is extracted below:-

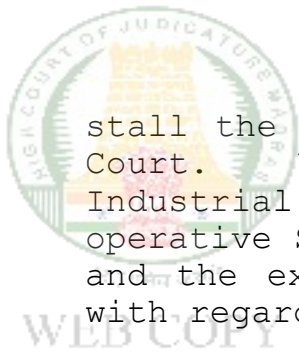
'149.Conditions of service of paid officers and servants of Societies:-

- (1)
- (2)
- (3) In matters of reservation for appointments and [age for retirement], the rule applicable to the Government servants shall be followed."

7. It is further submitted that in terms of Tamil Nadu State Subordinate Service Rule, Rule 35(a), the 200 point roster system is got to be followed and that is the sum and substance of the judgment of this Court in W.P.No.3857 of 2016, dated 08.06.2016.

8. Ms. Geetha, the learned counsel appearing for the petitioners would contend that the system of applying roster point with regard to promotion had already been considered by the Apex Court in the Judgment in **Tamil Nadu Public Service Commission, Rep. by its Secretary Vs. Government of Tamil Nadu, Rep. by its Secretary, Highways Department and Others and etc.**, dated 21.02.2016 and also by this Court in the Judgment in **N.Santosh Kumar and Others Vs. Tamil Nadu Public Service Commission, Rep. by its Secretary, Government, Chennai and others** reported in (2015 (4) MLJ 281), wherein it has been categorically held that inter se seniority cannot be fixed in terms of roster point. A reading of Section 149(3) would make it very clear that it is only with regard to appointment and it shall not be extended to promotion.

9. The contention of the learned Additional Advocate General that employees have already raised a dispute and that they have got alternative remedy in terms of decision of this Court and that the petitioner, having already approached the labour Court and also approached the authority and without invoking Section 153 of the Co-operative Societies Act, has come before this Court and trying to



stall the entire promotional avenue should not be accepted by this Court. When they have remedy under the special law viz., the Industrial Dispute Act, 1947 and also the General Law viz., the Co-operative Societies Act, this Court cannot be an alternative forum and the extraordinary jurisdiction of the Court cannot be invoked with regard to the disputed question of facts.

10. I have heard the learned counsels appearing on either side and perused the materials available on record.

11. It is not in dispute that 200 point roster system is trying to be applied to the promotees with regard to seniority for the purpose of promotion. Section 149 is only with regard to appointment and it cannot be extended to promotion. The Division Bench of this Court also taken note of Rule 35(a) and held that 'Once such fitment is done and the process of appointment is over, with the selected candidates joining duty, the roster will lost its significance and will have nothing to do with the determination of seniority.' Hence, this Court is of the view that 200 point roster system cannot be followed with regard to promotion. Even though it has been stated by the Additional Advocate General that the issue is pending before the Apex Court, the details of the SLP has not been produced, but since such statement has come across the bar, this Court takes that the subject matter is pending before the Apex Court. Till the issue is decided, the promotion can be made based on merit and not on roster point and the promotees can be informed that their promotion would be subject to the outcome of the SLP pending and they may also face the reversal in case a decision is rendered against them.

12. Coming to the next issue on hand with regard to an Industrial Dispute that is said to have been raised by the workers, it is very unfortunate that individuals have raised Industrial Dispute under Section 2(k) of the Industrial Dispute Act, 1947, challenging the applicability of roster system. Industrial Dispute itself is not maintainable, as individuals cannot raise an Industrial Dispute under Section 2(k) of the Industrial Dispute Act, 1947.

13. From the documents available before this Court, neither the five man committee nor the union have raised the dispute and the entire Labour Department time has been wasted by the individual worker in raising an individual dispute with regard to a charter of demand or a dispute falling under 2(k). The individuals are entitled to raise a dispute, if comes within the definition of Section 2-A of the I.D.Act., and not otherwise. Hence, the Government need not even consider the report submitted by the conciliation officer under Section 12(4), as the dispute is not maintainable.



confirmed and the Vacate Stay Petition in WMP(MD)No.9073 of 2016 stands dismissed. The respondents are entitled to give promotion to all the candidates, who are eligible without reference to the roster system by drawing the seniority list based on merits.

15. Post the Writ Petition for final hearing, after Diwali holidays.

sd/-
19/09/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
170 EVR PERIYAR SALAI, KILPAUK,
CHENNAI-10

2 THE MANAGING DIRECTOR/
JOINT REGISTRAR OF COOPERATIVE SOCIETIES,
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3 THE PRESIDENT,
DINDIGUL COOPERATIVE BANK LIMITED,
KOOTURAVU NAGAR, TRICHY ROAD,
DINDIGUL - 624005.

+1. C.C. to THE SPECIAL GOVERNMENT PLEADER, IN SR.No.18054
+1. C.C. to MR.V.O.S.KALAISELVAM, ADVOCATE IN SR.No.17960
+1. C.C. to MR.D.SHANMUGARAJA SETHUPATHI, ADVOCATE IN SR.No.17940

ORDER IN
WMP(MD) No.9073 & 1499 of 2016
IN WP(MD) No.1734 of 2016
Date :19/09/2018

MPK
PK/PN/SAR-4/09.11.2018 : 5P/7C