

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.15865 of 2013

B.Joghee

.. Petitioner

Vs.

- 1.The State of Tamilnadu,
rep.by its Secretary,
Cooperation, Food & Consumer Protection,
Fort St.George, Chennai-9.
- 2.The Additional Secretary to Government
Cooperation, Food & Consumer Protection,
Fort St.George, Chennai-9.
- 3.The Registrar of Co-operative Societies,
No.170 EVT Periyar Salai,
Kilpauk, Chennai-10.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of certiorarified Mandamus to call for the records relating to 2nd respondent's order made in letter No.26352/CE1/2012-1 dated 2.04.2013, to quash the same and consequently direct the respondents to consider and promote the petitioner as Additional Registrar of Co-operative Societies, from the date on which is immediate junior was promoted as such with all benefits, including notional fixation of pay and revision of pension and pensionary benefits forthwith thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Ms.T.Girija
Government Advocate

ORDER

The instant writ petition is one for Writ of certiorarified Mandamus to call for the records relating to 2nd respondent's order made in letter No.26352/CE1/2012-1 dated 2.04.2013, and direct the respondents to consider and promote the petitioner as Additional Registrar of Co-operative Societies, from the date on which is immediate junior was promoted as such with all benefits, including all pensionary benefits forthwith thereto.

2.The petitioner was appointed as Senior Inspector of Co-operative Societies. He was promoted as Deputy Registrar and later on promoted as Joint Registrar on 21.08.1996. While he was working as Joint Registrar a Charge memo dated 18.10.2006, under Rule 17(b) - TDP No.2/2006 was issued. The said charges were dropped vide G.O.(D) No.393 dated 06.09.2010. The petitioner faced yet another Charge memo dated 25.01.2006 under Rule 17(b) - TDP No.14/2005. It was also dropped vide G.O.(D) No.118 dated 29.06.2012. On 08.07.2009, a third Charge memo under Rule 17(b) was issued to the petitioner. It ended in imposition of punishment of stoppage of increment for one year without cumulative effect vide G.O.(2D).No.93 dated 10.08.2010. The petitioner filed a Review Petition to the Government and the Government vide G.O.(2D) No.128 dated 16.07.2012 cancelled the above mentioned punishment by observing as under:

"5.The Government have carefully examined the review petition of Thiru.BJoghee, Joint Registrar of Co-operative Societies with connected records, along with the views of the Tamil Nadu Public Service Commission and decided to accept the views of the Commission and to cancel the punishment of stoppage of his next increment for one year without cumulative effect (excluding the period spent on leave), imposed by the Government on Thiru. B.Joghee, Joint Registrar of Co-operative Societies. Accordingly, the Government do and hereby order that the punishment of stoppage of increment for one year without cumulative effect imposed by the Government vide Government Order (2d) No.93, Co-operation Food and Consumer Protection Department, dated 10.08.2010 on Thiru.B.Joghee, Joint Registrar of Co-operative Societies, be cancelled".

3.The petitioner therefore sought for consideration for being appointed as Additional Registrar. A representation was given by the petitioner on 15.11.2012 and the representation of the petitioner was rejected by the impugned order dated 02.04.2013, which reads as under:

"I am directed to invite your attention to the reference cited and to state that in the Government Order first cited, the Government after taking a lenient view on

the charges framed against Thiru.B.Joghee, Joint Registrar (Retired), which were held as proved by the Commissioner of Disciplinary proceedings, Coimbatore, issued orders for dropping of the charges and permitted to retire from service.

2.In view of the above, I am to state that Thiru.B.Joghee is not entitled for promotion as Additional Registrar of Co-operative Societies for the year 2010-2011 and hence, his request cannot be complied with in Government.".

4.It is the order which is challenged in the instant writ petition.

5.The learned counsel for the petitioner states that once the three charges have been wiped out, there is no impediment for considering the petitioner for promotion as Additional Registrar for the year 2010-2011. The impugned order rejects the representation of the petitioner on the ground that the petitioner was exonerated only after taking a lenient view is not correct and is contrary to G.O.(2D) No.128 dated 16.07.2012.

6.On the other hand, the learned counsel for the respondents would state that the post of Additional Registrar both merit and seniority has to be considered before a person is appointed to the post. He would submit that the promotion cannot be automatic, even when a person is exonerated from the charges.

7.A reading of the impugned order dated 02.04.2013, shows that the petitioner's representation was not considered on the ground that only after taking a lenient view, the petitioner was exonerated and the charges had been proved by the Commissioner of Disciplinary Proceedings, Coimbatore. The impugned order is completely contrary to G.O.(2D) No.128 dated 16.07.2012. The impugned order cannot be sustained and the same

is set aside. The respondents are therefore directed to consider the petitioner's representation dated 02.11.2012 for promotion as Additional Registrar for the year 2010-2011 in accordance with rules and various other conditions.

Writ Petition is disposed of on the above mentioned terms. No Costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

KP
To

- 1.The State of Tamilnadu,
rep.by its Secretary,
Cooperation, Food & Consumer Protection,
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No.170 EVT Periyar Salai,
Kilpauk, Chennai-10.

+1 cc to Mr.L.Chandrakumar Advocate sr89718
+1 cc to Special Government Pleader sr90367

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