

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.23049 of 2008

and

M.P.Nos.2 of 2008 and 1 of 2015

A.Murugesan

.. Petitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Food, Co-operation and Consumer Protection Department,
Fort St.George,
Chennai - 600 009.
 2. The Registrar of the Co-operative Societies,
Chennai - 600 010.
 3. The Joint Registrar of Co-operative Society,
Salem Region, Salem - 636 007.
 4. The Joint Registrar / Special Officer,
Salem District Central Co-operative Ltd.,
Salem.
- .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus calling for the records of the fourth Respondent relating to [1] Explanation under Byelaw 7B of the Special Byelaws relating to service conditions of the Employees of Salem District Central Co-operative Bank Ltd., approved on 15.03.2004 and [2] the consequential non-promotion of the Petitioner as Assistant Manager in the fourth Respondent Bank in Pro.Na.Ka.No.20008/85 Ni.10 dated 01.08.2008, and quash the Explanation under Byelaw 7B of the Special Byelaws and consequently quash the order dated 01.08.2008 of the fourth Respondent to the limited extent of non-promotion of the Petitioner as Assistant Manager and to direct the fourth Respondent to promote the petitioner as Assistant Manager with retrospective effect from the date of promotion of his immediate junior with all consequential benefits.

For Petitioner : Mr.A.Veerasamy
for Mr.M.Narayanaswamy

For RR1 to 3 : Ms.T.Girija
Government Advocate (Co-op)

For R4 : Mr.M.R.Raghavan

O R D E R

This Writ Petition is filed for issuance of writ of Certiorarified Mandamus calling for the records of the fourth Respondent relating to [1] Explanation under Byelaw 7(B) of the Special Byelaws relating to service conditions of the Employees of Salem District Central Co-operative Bank Ltd., approved on 15.03.2004 and [2] the consequential non-promotion of the Petitioner as Assistant Manager in the fourth Respondent Bank in Pro.Na.Ka.No.20008/85 Ni.10 dated 01.08.2003, and quash the Explanation under Byelaw 7(B) of the Special Byelaws and consequently quash the order dated 01.08.2008 of the fourth Respondent to the limited extent of non-promotion of the Petitioner as Assistant Manager and to direct the fourth Respondent to promote the petitioner as Assistant Manager with retrospective effect from the date of promotion of his immediate junior with all consequential benefits.

2.According to the petitioner, he was appointed as Assistant in the fourth respondent Bank on 25.03.1987 and he was the senior most Assistant in the Bank. He was placed at Sl.No.2 in the seniority list. The next avenue of promotion is to the post of Assistant Manager. The petitioner is fully qualified for promotion to the post of Assistant Manager on 01.08.2008. His name was not considered for promotion in the year 2008. His juniors were promoted as Assistant Managers on 01.08.2008. On verification, the petitioner came to know that his name was not considered for promotion as he was imposed a punishment of stoppage of increment for three years without cumulative effect on 20.05.2004 for the alleged occurrence related to 02.03.1996. The petitioner was suspended from service on 16.12.2003 and was issued charge memo dated 08.02.2004 for the alleged lapse on the part of the petitioner for allowing a sum of Rs.33,000/- being withdrawn on 02.03.1996 from the Savings Bank account No.8718 belonging to one S.Annapoorni, through withdrawal slip No.12392 without Pass Book, while the said S.Annapoorni died on 10.03.1995 itself. The petitioner submitted his explanation. After conducting an enquiry, the petitioner was imposed punishment of stoppage of increment for three years without cumulative effect. In the revision filed by the petitioner, the first respondent by the order dated 11.06.2007, reduced the punishment to stoppage of increment for two years without

cumulative effect. The punishment imposed on the petitioner was over in the year 2006 itself. No punishment was in force on 01.08.2008, when the fourth respondent considered promotion to the post of Assistant Manager. The case of the petitioner is that he was not considered for promotion on the ground that he suffered punishment within three years prior to the date of consideration for promotion as per Byelaw 7 (B). The learned counsel appearing for the petitioner submitted that the punishment suffered three years prior to the date of consideration for promotion amounts to check period of three years. The check period of five years imposed on Government Servant was struck down by Full Bench of this Court by the judgment reported in 2011 (3) CTC 129 [The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another Vs. V.Rani], wherein the Full Bench of this Court has held that the check period imposed by the Government is invalid. The ratio of the said judgment is squarely applicable to the case of the petitioner.

3. Further, the alleged misconduct had occurred on 02.03.1996 and it is only procedural lapse and not involving moral turpitude and the fourth respondent Bank has not suffered any loss. One V.Velusamy, Cheque Passing Officer was fully responsible for the procedural lapse. The said V.Velusamy, Cheque Passing Officer has retired from service on 31.07.1998 and hence the petitioner was made scapegoat. Even though the petitioner was not responsible for procedural lapse, the petitioner on moral ground has paid the said sum of Rs.33,000/- with interest. The learned counsel for the petitioner further contended that the fourth respondent has issued charge memo on 08.02.2004, after delay of eight years for the occurrence that took place on 02.03.1996 and imposed punishment for the alleged misconduct. Had the fourth respondent initiated disciplinary proceedings in the year 1996 itself, the petitioner would have completed the punishment long before 01.04.2008 and Special Byelaws relied on by the respondents will not be applicable for denying the promotion to the petitioner and he would have been considered for promotion to the post of Assistant Manager in the year 2008 itself. Imposing punishment long after eight years and the said punishment relied on by the respondents will not be applicable for denying promotion to the petitioner, as per provisions of Rule 4 of the General Rules for Tamil Nadu State and Subordinate Service. Further, the guidelines issued by G.O.Ms.No.368, P.&AR. Department dated 18.10.1993, are analogous to the Byelaws of the Bank. As per the guidelines, as far as the punishments are concerned, it should be examined whether irregularities took place within the specified period of service taken up for analysis and whether the irregularities were such as to make the case as unfit for promotion. If any punishment was imposed on the employee within the check period for the

irregularities which occurred 5 years prior to the crucial date, such punishment need not be held against the employee for promotion.

4. In support of his contention, the learned counsel appearing for the petitioner relied on by the judgment of this Court reported in 2005 (2) L.L.N.499 [S.Sankaranarayanan Perumal Vs. Tamil Nadu Civil Supplies Corporation Ltd., (represented by its Chairman and Managing Director), Chennai], wherein in paragraph Nos.13 to 15, it has been held as follows:

"...13. It is also noteworthy that the temporary panel, dated 3 February 1997, and the petitioner's name finds as item (6) in the list of persons to be promoted as Assistant Manager. It is also not disputed that his name does not find place among the seven persons who have been shown to have not been included in the list due to punishment/charges. It is true that the preparation of the said temporary panel and not showing his name in the list of persons as not included, could be a mistake due to oversight. But the right of the petitioner to be considered for promotion cannot be disputed. It is settled proposition of law that a minor punishment cannot be cited as the reason for denying promotion. The right of the Government servant/the employee with the respondent which is a State under Art.12 of the Constitution of India to be promoted and being denied the promotion on irrelevant and arbitrary grounds is certainly justiciable. The punishment of stoppage of increment for a period of one year without cumulative effect can only date back to the original order of punishment namely on 12 September 1994. The contention of the learned counsel for the respondent that it would be operative for one year from the date of passing of the order namely from 27 February 2000 cannot at all be sustained. If such is the interpretation of the Rules, the said Rule is liable to be struck down as arbitrary and violative of Art.14 of the Constitution of India. The punishment awarded after review is only in

substitution of the punishment granted earlier on 12 September 1994. It can be operative only for one year from that date.

14. That apart for the reasons already stated, there is no justification for the respondent to have delayed proceedings unnecessarily from 1994. Orders converting the punishment as stoppage of increment in review came to be passed only on 27 February 2000. There is no justification for the delay much less arbitrary Handling of the petitioner's case. Having regard to the nature of the punishment which has been awarded even after suo motu petition, there is no justification to deny the promotion to the petitioner and allowing his juniors to walk over him. The revised order will take effect only from 12 September 1994 and will be operative only for a period of one year namely upto 12 September 1995. The temporary panel of Assistant Manager having been issued much later namely on 3 February 1997, the legitimate right of the petitioner to be placed in the temporary panel cannot be disputed.

15. It is true that by issuing mandamus, this Court cannot direct the respondent to promote the petitioner automatically, However, the right of the petitioner who had been included in the panel, dated 3 February 1997, and on the crucial date of 1 September 1997 cannot be denied."

The learned counsel appearing for the petitioner further contended that due to delay on the part of the fourth respondent in issuing charge memo, not initiating disciplinary proceedings immediately and imposing punishment long after the alleged irregularity, cannot be put against the petitioner for denying his promotion. The petitioner is fully qualified and fit to be promoted as Assistant Manager, when his juniors were promoted on 01.08.2008. The learned counsel for the petitioner submitted that even though the petitioner is challenging the Byelaws in the Writ Petition, the petitioner is restricting his claim for a direction to the fourth respondent to consider the case of the

petitioner for promotion to the post of Assistant Manager, when his juniors were being promoted on 01.08.2008.

5. Respondents 2 and 3 filed a counter affidavit and 4th respondent filed separate counter affidavit. Ms.T.Girija, learned Government Advocate (Co-op) appearing for the respondents 1 to 3 and Mr.M.R.Raghavan, learned counsel appearing for the fourth respondent separately contended that the Writ Petition filed against the Co-operative Society is not maintainable as held by the Full Bench of this Court. Further, there is an alternative effective remedy of filing an appeal and the petitioner without initiating the said remedy, has approached this Court. The Byelaws between the Co-operative Society and its employees are contractual in nature and it is binding on the employees of Co-operative Society. The learned counsel appearing for the fourth respondent further contended that the service condition of the employees are governed by the Special Byelaws. For the misconduct committed by the petitioner, the punishment of stoppage of increment of three years without cumulative effect was imposed. The second respondent in the revision filed by the petitioner held that the domestic enquiry conducted against the petitioner was fair and proper and the charges leveled against the petitioner was proved and on humanitarian consideration, the second respondent reduced the punishment imposed to stoppage of increment for two years without cumulative effect. The petitioner has not challenged the said punishment and the order of the second respondent has become final. Byelaw 7(B) relates to the service conditions of service of the employees. No employee shall be considered for promotion for a higher category of the post unless he has put in satisfactory service of not less than three years in the post held by him. The explanation to the Byelaw 7(B) states that satisfactory term of service means a service not having been or being subjected to any punishment during the period of three years prior to the date of consideration for promotion. Even though the petitioner's name was in Sl.No.2 in the seniority list of the assistants, his name was not considered. The relief sought for by the petitioner is not maintainable. The contention of the learned counsel for the petitioner regarding delay in initiating disciplinary proceedings is not tenable in law. The son of the account holder S.Annapoorni came to the Bank only in the year 2003 and on enquiry, the petitioner admitted that he allowed the withdrawal through the withdrawal slip without Pass Book. The petitioner suppressed this fact and filed Writ Petition and for suppression of fact, the Writ Petition is liable to be dismissed. The petitioner has not raised this issue of delay in initiating disciplinary proceedings before the Revisional Authority. The alleged irregularity is only a procedural lapse, not involving any loss to the Bank nor moral turpitude has no relevance to the issue before this Court. The

said explanation to Byelaw 7(B) is not arbitrary and unreasonable. The contention of the petitioner that Byelaw 7(B) cannot be an impediment for promotion is unsustainable. The allegation that "phrase or being subjected to non punishment during period of three years prior to date of consideration for promotion would result in hardship to the petitioner" is not correct. The Tamil Nadu State and Subordinate Service conditions are not applicable to the fourth respondent Bank. The contention raised by the petitioner in the ground for denial of promotion to the petitioner is arbitrary or unjustified is not correct. The petitioner is not entitled to any relief as claimed by him and prayed for dismissal of the Writ Petition.

6. Heard the learned counsel appearing for the petitioner as well as learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent and perused the entire materials on record.

7. From the materials available on record, it is seen that the petitioner was appointed as Assistant in the fourth respondent Bank on 25.03.1987. He was at Sl.No.2 in the seniority list of Assistant as on 01.08.2008. The next avenue of promotion for Assistant is to the post of Assistant Manager and 36 vacancies were available as on 01.08.2008. The petitioner was not promoted as Assistant Manager even though he was in Sl.No.2 in the post of Assistant and his juniors were being promoted. A person can be promoted if he has put in minimum period of three years of satisfactory service in the post from which he is eligible to be promoted to the higher post. This condition is incorporated in Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1989. The relevant portion of Rule 149 reads as follows:

"[Provided that in the case of the post, other than the post of manager, superintendent and above] a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post"

The fourth respondent has framed Byelaw 7(B). In addition to this, proviso to Rule 149, the fourth respondent has incorporated an explanation for the promotion regarding three years of satisfactory service. According to the explanation to the Byelaw 7(B), satisfactory service of three years means that "an employee is not subjected to any punishment during the period of three years prior to the date of consideration for promotion". This explanation is not in Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1989. The restriction imposed

by explanation to Byelaw 7(B) amounts to imposing check period. Similar check period on Government servants wherein it has been stated that an employee should not have suffered a punishment within 5 years to the date of consideration. This check period came up for consideration before the Full Bench of this Court. The Full Bench of this Court, after considering the various judgments, has held that "it can never be said that even after the period of punishment is over, in between the date of crucial date and the date of punishment, there must be one year in case of censure and five years in other case as disqualification period". The check period imposed by the Government was held as not having legal force. The ratio in the judgment of Full Bench of this Court is squarely applicable to the facts of the present case.

8. Further the Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1989, made under the Act does not prescribe any disqualification period but prescribes only three years of satisfactory service in the post from which an employee is promoted to a higher post. Therefore, Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1989, made under the Act prescribes only three years of satisfactory service in the post from which an employee is promoted to a higher post. It is an admitted case that irregularity alleged against the petitioner occurred on 02.03.1996 and petitioner was suspended only on 16.12.2003 and charge memo was issued on 08.02.2004 and punishment was imposed on 20.05.2004. From the above dates, it is clear that the fourth respondent has initiated disciplinary proceedings only in the year 2004, after a period of eight years of occurrence. In the counter affidavit filed by the fourth respondent, there is no explanation for the delay. On the other hand, it is the contention of the learned counsel appearing for the fourth respondent that the petitioner has not raised this issue of delay in initiating disciplinary proceedings before the second respondent in revision and therefore he cannot raise the same in the Writ Petition. The said contention is without merits. It is the contention of the learned counsel appearing for the petitioner that had the fourth respondent initiated disciplinary proceedings immediately on the alleged irregularity and imposed punishment, the petitioner would have completed the punishment and would have been considered for promotion to the post of Assistant Manager on 01.08.2008, has considerable force. As per the guidelines in G.O.Ms.No.368, P.&AR. Department dated 18.10.1993, if an employee suffered punishment within the check period which occurred 5 years prior to check period, such punishment need not be held against the employee. The irregularity occurred in the year 1996 and the crucial date for promotion is 01.08.2008. Therefore, the punishment imposed on 20.05.2004 cannot be taken into account for denying promotion to the petitioner as on 01.08.2008. Paragraph Nos.14 and 15 of the

judgment of this Court reported in 2005 (2) L.L.N.499, cited supra relied on by the learned counsel appearing for the petitioner are squarely applicable to the facts of the present case. The petitioner cannot be denied promotion on the ground that he suffered punishment within a period of three years as on 01.08.2008 and he has to be considered for promotion when his juniors were promoted as the petitioner was not suffering any punishment as on the date. There was no currency of punishment on 01.08.2008.

9.The Full Bench of this Court in the judgment relied on by the learned counsels for the respondents has not held that no Writ Petition will lie against the Co-operative Society under any circumstances. On the other hand, it has held that under certain circumstances Writ Petitions will lie against the Co-operative Societies. As held by this Court in the judgment reported in 2005 (2) L.L.N.499 [S.Sankaranarayanan Perumal Vs. Tamil Nadu Civil Supplies Corporation Ltd., (represented by its Chairman and Managing Director), Chennai], this Court cannot direct the fourth respondent to promote the petitioner automatically. On the other hand the right of the petitioner that his name to be included in the panel dated 01.08.2008 cannot be denied. For the above reason, the fourth respondent is directed to consider the petitioner for promotion as on 01.08.2008, without taking into consideration explanation to Byelaw 7(B).

10.The Writ Petition is pending in this Court from the year 2008 and therefore the contention of the learned counsel for the respondents that petitioner must avail the alternate remedy under Section 153 of Tamil Nadu Co-operative Societies Act, 1983 cannot be entertained after lapse of 11 years.

11.In the result, this Writ Petition is allowed. The fourth respondent is directed to consider the claim of the petitioner for being promoted with retrospective effect from 01.08.2008 without reference to explanation to Byelaw 7(B) and promote him if he is otherwise eligible with all consequential benefits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

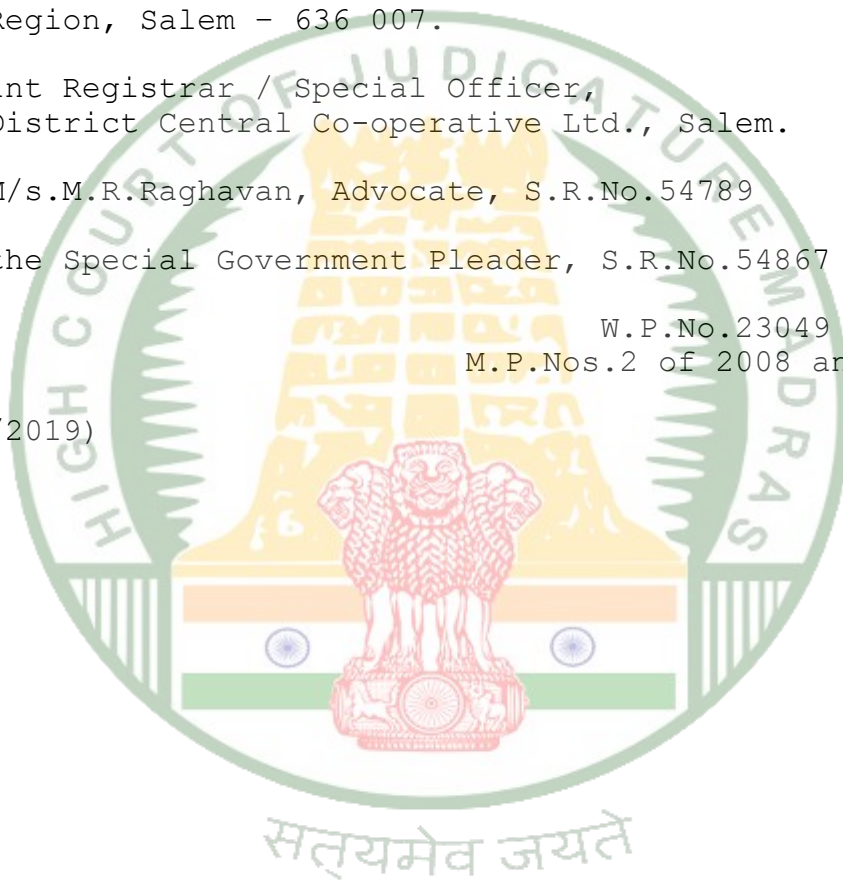
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To

1. The Secretary to Government,
Government of Tamil Nadu,
Food, Co-operation and Consumer Protection Department,
Fort St.George, Chennai - 600 009.
 2. The Registrar of the Co-operative Societies,
Chennai - 600 010.
 3. The Joint Registrar of Co-operative Society,
Salem Region, Salem - 636 007.
 4. The Joint Registrar / Special Officer,
Salem District Central Co-operative Ltd., Salem.
- +1 cc to M/s.M.R.Raghavan, Advocate, S.R.No.54789
- +1 cc to the Special Government Pleader, S.R.No.54867

W.P.No.23049 of 2008 and
M.P.Nos.2 of 2008 and 1 of 2015

RSV(CO)
SSM(28/08/2019)



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