IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2019

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Krishnan Ramasamy

Writ Petition No. 29996 of 2016

P. Murugan .. Petitioner

Versus

1. The Government of Tamil Nadu
   rep. by Principal Secretary to Government
   Finance (Co-operative Audit) Department
   Secretariat, Chennai - 600 009

2. The Additional Secretary to Government
   Finance (Co-operative Audit) Department
   Secretariat, Chennai - 600 009

3. The Secretary to Government
   Personnel and Administrative Reforms Department
   Secretariat, Chennai - 600 009

4. The Director of Co-operative Audit
   Chepauk, Chennai - 600 005 .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to (1) G.O. Ms. No.561, Finance (Co-operative Audit) Department dated 26.06.1987 of the first respondent framing Ad hoc Rules for the post of Assistant Director of Co-operative Audit and (2) Letter No.7203/(Koo-Tha)/ 2016, Finance (Co-op Audit) Department dated 17.03.2016 of the second respondent and to despite Rule 7 of the Ad hoc Rules as illegal and ultra vires and to quash the order dated 17.03.2016 of the second respondent and to issue consequential directions to the respondents to fix the period of probation for the post of Assistant Director of Co-operative as 'two years' within a period of three years and to include the name of the petitioner in the panel for promotion as Deputy Director of Co-operative Audit in the appropriate place and to promote him as such with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

For Petitioner :Mr. M. Ravi

For Respondents:Mr. A. Kumar, Additional Advocate General
assisted by Mr. L.P. Shanmuga Sundaram
Special Government Pleader for RR1, 2& 4

Mr. J. Pothiraj
Special Government Pleader for R3

ORDER

(Order of the Court was made by R. SUBBIAH, J)

The petitioner calls in question G.O. Ms. No.561, Finance (Co-operative Audit) Department dated 26.06.1987 of the first respondent framing Ad hoc Rules for the post of Assistant Director of Co-operative Audit and the Letter No.7203/ (Koo-Tha)/2016, Finance (Co-op Audit) Department dated 17.03.2016 of the second respondent and to declare Rule 7 of the Ad hoc Rules as illegal and ultra vires and to quash the order dated 17.03.2016 of the second respondent and to issue consequential directions to the respondents to fix the period of probation for the post of Assistant Director of Co-operative as 'two years' within a period of three years and to include the name of the petitioner in the panel for promotion as Deputy Director of Co-operative Audit in the appropriate place and to promote him as such with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

2. As per the averments made in the affidavit filed in support of the writ petition, the petitioner was appointed as Junior Co-operative Auditor on 02.05.2000 and promoted as Senior Co-operative Auditor during the year 2005 and further promoted to the post of Cooperative Officer during 2009, which post he held till 09.01.2014. According to the petitioner, he applied for the post of Assistant Director of Co-operative Audit through the Tamil Nadu Public Service Commission for the year 2007-2008 and he was selected and appointed to the said post vide G.O. Ms. No.461, Finance (Co-operative Audit) Department dated 27.12.2013 by direct recruitment in the Tamil Nadu Cooperative Service. Even at the time of appointment, it was clearly stated that the services of the petitioner will be regularised after receipt of an intimation by the Tamil Nadu Public Service. According to the petitioner, since he had already undergone the practical cooperative training while he was working as Junior Cooperative Auditor, he was given exemption to undergo such training prescribed for directly recruited Assistant Director of

Cooperative Audit under Rule 8 (a) (ii) and (iii) of Adhoc Rules framed in G.O. Ms. No. 561, Finance (Co-operative Audit) Department dated 26.06.1987. It was also ordered therein that the petitioner shall be on probation for a period of three years within a continuous period of four years from the date on which he joins duty. As the petitioner joined duty as Assistant Director of Cooperative Audit on 10.04.2014, his service was regularised vide G.O. Ms. No.28, Finance (Co-operative Audit) Department dated 28.01.2016, with effect from 10.01.2014.

3. The grievance of the petitioner appears to be that the period of probation prescribed for directly recruited Assistant Director of Cooperative Audit is three years within a continuous period of service of four years as per Rule 7 of the Adhoc Rules framed udner G.O. Ms. No.561, Finance (Cooperative Audit) Department dated 26.06.1987, whereas, probation for those who were appointed by recruitment by transfer to the said post is two years within a continuous period of three years. The petitioner also referred to the posts which are considered as equivalent to the post of Assistant Director of Cooperative Audit and submitted that for those posts, the period of probation has been prescribed as two years within a continuous period of three years, however, without any reason, the probation for the directly recruited Assistant Director of Cooperative Audit has been fixed as three years within a continuous period of four years. According to the petitioner, as he was granted exemption from undergoing the 36 weeks training while he was working as Junior Cooperative Auditor, the respondents ought to have declared his probation in two years within a continuous period of three years as a special case. This, according to the petitioner, has a barring in getting further promotion on par with those who were promoted to the post of Assistant Director of Cooperative Audit by recruitment by transfer. The petitioner therefore submitted a representation dated 21.01.2016 to the first respondent seeking to grant relaxation with respect to the period of probation to the post of Assistant Director of Cooperative Audit held by the petitioner in terms of Rule 48 of the General Rules for Tamil Nadu State and Subordinate Service so as to enable him to get his name empanelled for further promotion to the post of Deputy Director of Cooperative Audit. As the representation dated 21.01.2016 of the petitioner has not been considered, he has filed the present writ petition.

4. The learned counsel for the petitioner made a detailed submission and reiterated the averments made in the affidavit filed in support of the writ petition.

5. The learned Additional Advocate General appearing for the respondents 1, 2 and 4, by placing reliance on the counter affidavit of the fourth respondent, would contend that consequent to the bifurcation of Cooperative Audit Department from Cooperative Department on 17.06.1981, adhoc rules were framed exclusively for the Cooperative Audit Department for the post of Joint Director of Cooperative Audit and Assistant Director of Cooperative Audit vide G.O. Ms. No.561, Finance (CA) Department dated 26.06.1987. As per Rule 7 of the Adhoc Rules, every person appointed by direct recruitment to the post of Assistant Director shall be on probation for a total period of three years on duty within a continuous period of four years and the person appointed by recruitment by transfer to the post of Assistant Director shall be on probation for a total period of two years on duty within a continuous period of three years. Therefore, as per Rule 7, the probation period of the petitioner, who was directly recruited to the post of Assistant Director of Cooperative Audit, is three years within a continuous period of four years. It is further contended by the learned Additional Advocate General that adhoc rules are framed by the departments taking into consideration various factors such as structure of the department, promotional avenue, strength of the department, nature of work and responsibilities, pay scale of the specific post etc.,. This varies from department to department and therefore, the petitioner cannot compare the adhoc rules framed in one department with that of the other. Thus, it is his contention that framing of Adhoc Rules is not a person oriented but department-oriented. It is further contended that when admittedly the petitioner was recruited to the post of Assistant Director of Cooperative Department by direct recruitment, the adhoc rules will apply to his case and he cannot compare the period of probation fixed to those who are recruited by transfer. Above all, it is contended that the adhoc rules in existence did not deprive the petitioner's promotional avenue in any manner because there are nearly 300 persons ahead of the petitioner in the seniority list who are required to be promoted . Even in terms of duties and responsibilities between the Deputy Register and the Assistant Director of Cooperative Audit, it differs on several grounds and that is the reason why the period of probation is fixed unequally. In such event, if the rule is relaxed as claimed by the petitioner, then the persons whose probation was not declared will also seek similar benefits and it will set a bad precedent and in such event, it will cause administrative inconsistency and chaos. In any event, fixing the duration of probation is an administrative decision taken by the department concerned and it is governed by the adhoc Rules which cannot be altered or varied at the instance of the petitioner. Therefore, the learned Additional Advocate General prayed for dismissal of the writ petition.

6. We have heard the counsel for both sides and perused the materials placed on record. Admittedly, as per the adhoc Rules in force, the Assistant Director of Cooperative Audit, who was appointed by direct recruitment, has to undergo three years of probation period within a continuous period of four years, whereas, those who were appointed to such post by recruitment by transfer shall undergo two years of probation within a continuous period of three years. This according to the petitioner has to be relaxed in so far he is concerned taking into consideration that he was already granted exemption from undergoing the 36 weeks mandatory training while he was working as Junior Cooperative Auditor and the 14 years of service he had already put in prior to his appointment to the post of Assistant Director of Cooperative Audit. However, the learned Additional Advocate General for the respondents opposed granting such relief as it would result in multiplicity of claim for similarly placed persons like the petitioner.

7. At this stage, the learned counsel for the petitioner would contend that even though the writ petition has been filed challenging G.O. Ms. No.561, Finance (Co-operative Audit) Department dated 26.06.1987 of the first respondent framing Ad hoc Rules for the post of Assistant Director of Co-operative Audit and (2) Letter No.7203/(Koo-Tha)/2016, Finance (Co-op Audit) Department dated 17.03.2016 of the second respondent and to declare Rule 7 of the Ad hoc Rules as illegal and ultra vires, he restricts his prayer to the limit extent of directing the respondents to consider the representation dated 21.01.2016 submitted by the petitioner to the first respondent seeking to grant relaxation with respect to the period of probation to the post of Assistant Director of Cooperative Audit held by the petitioner in terms of Rule 48 of the General Rules for Tamil Nadu State and Subordinate Service.

8. Having regard to the aforesaid submission of the learned counsel for the petitioner, without expressing any opinion on merits, the first respondent is directed to consider the representation dated 21.01.2016 submitted by the petitioner and to pass orders thereon on merits and in accordance with law, after affording an opportunity to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner is also directed to submit a copy of the representation dated 21.01.2016 to the first respondent along with a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs. Connected WMP No. 25968 of 2016 is closed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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1. The Principal Secretary
   Government of Tamil Nadu
   Finance (Co-operative Audit) Department
   Secretariat, Chennai - 600 009

2. The Additional Secretary to Government
   Finance (Co-operative Audit) Department
   Secretariat, Chennai - 600 009

3. The Secretary to Government
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4. The Director of Co-operative Audit
   Chepauk, Chennai - 600 005

+ 1cc to Spl Govt Pleader(co.op) Sr.38805

NMI(CO)
CB(03/09/2019)

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