

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17697 of 2018

AG Chandrasekar,
Joint Registrar / Managing Director,
Triplicane Urban Co-operative Society Ltd.,
Chennai - 05. ... Petitioner

Vs.

1. The Principal Secretary to Government,
Cooperation Food and Consumer Protection Department,
Secretariat,
Chennai - 09.
2. The Registrar of Co-operative Societies,
Kilpauk,
Chennai -10. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to include the name of the petitioner in the panel for promotion to the post of Additional Registrar, Co-operative Societies and consequently promote him in the existing vacancy, by considering his representation dated 21.12.2017

For Petitioner : M/s.K.Sathish Kumar

For Respondents : Mrs.T.Girija, G.A.

ORDER

The grievance of the petitioner is that in view of the pendency of the Criminal Case in C.C.No.91 of 2001 (Old C.C.No.1 of 2000), before the Special Court under Prevention of Corruption Act, Chennai, his promotion to the post of Additional Registrar of Co-operative Societies from the post of Joint Registrar of Co-operatives has been withheld.

2. According to the learned counsel for the petitioner, the criminal case has been unnecessarily prolonging, without sufficient cause and therefore, the petitioner herein should not be made to suffer in view of the pendency.

3. The learned counsel for the petitioner also submitted that the Departmental proceedings initiated against the petitioner herein had already been dropped and therefore, the reasons cited by the respondents referring to the pendency of the Criminal Case for disqualifying the petitioner's promotion is not justifiable.

4. The learned Government Advocate appearing for the respondents submitted that in view of the pendency of the criminal proceedings, which is also the subject matter of the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the respondents are not in a position to consider the petitioner's candidature for promotion. Since there is no provision under the said Rules or any other Regulations entitling the petitioner to be promoted, as criminal proceedings are pending against him, not including his name in the promotion panel is justifiable.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that the departmental proceedings initiated against the petitioner herein has been dropped through G.O.Ms.No.257, Cooperation, Food and Consumer Protection Department, dated 02.12.2002 and the criminal proceedings, which was initiated in the year 2000, has been kept pending till date without sufficient progress.

7. It is seen that earlier also when the criminal case was pending, the petitioner's name was deferred in the panel for promotion to the post of Joint Registrar of Co-operatives for the year 2001-2002. In those circumstances, the petitioner herein had filed O.A.No.9766 of 1999 before the Tamil Nadu Administrative Tribunal, in which, by an order dated 23.07.2000, the respondents were directed to complete the enquiry within a stipulated time with further direction to include his name in the panel for promotion subject to the result of the disciplinary proceedings. As against the said order, the respondents had filed a Writ Petition No.13573 of 2000 and this Court by an order dated 02.12.2003 has observed as follows:

"7. Admittedly the departmental proceeding has been dropped against the second respondent herein by the Government. From the facts and circumstances it appears that it would take several years for the criminal proceedings to reach the stage of finality. That apart,

it appears that only the same set of evidence has to be considered by the Criminal Court. In these circumstances, this Court is of the view that the petitioners should be directed to include the name of G.Chandrasekaran, the second respondent herein in the panel dated 21.2.2003 giving appropriate ranking and also to promote him. Accordingly, there will be a direction to that effect it is made clear, in the event of ultimately 2nd respondent being acquitted in the criminal case, then he can put forth all other claims including that he ought to have been promoted long back."

8. While considering the above orders of this Court, the respondents had promoted the petitioner to the post of Joint Registrar of Co-operatives through G.O.Ms.No.47, Cooperation, Food and Consumer Protection Department, dated 21.01.2003, with a rider that the promotion would be subject to the result of the criminal case pending against him. The present Writ Petition is also on similar set of facts, wherein, the petitioner herein is due to be promoted to the post of Additional Registrar of Co-operatives.

9. The learned Government Advocate submitted that the petitioner's candidature cannot be considered for the promotional post of Joint Registrar of Co-operatives, as per the instructions issued in Clause 11 (1) and (5) of Schedule XI of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, since the criminal case is pending against him on the crucial date.

10. I am unable to accept such a submission, in view of the fact that earlier when the orders came to be passed in the Writ Petition, in W.P.No.13573 of 2000 dated 02.12.2003, the respondents had abided the orders of this Court and consequently, granted promotion to the petitioner as Joint Registrar of Co-operatives.

11. In the counter statement filed by the Deputy Secretary to Government, Co-operation, Food and Consumer Protection Department, it is seen that the petitioner's promotion to the post of Joint Registrar of Co-operatives has not been challenged after taking a decision not to file an appeal against the order of this Court. While that being the case, the respondents cannot now quote the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and submit it to be an embargo for promoting the petitioner. Since this Court had

earlier extended such relief to the petitioner, by observing that the promotion granted would be subject to the decision of the disciplinary proceedings, in my view, the similar relief can be extended to the petitioner for the present promotion also.

12. It is brought to the notice of this Court that the criminal proceedings have been kept pending for the past 18 years, without attaining any finality, for no fault of the petitioner herein. It is also submitted by the learned counsel for the petitioner that though this Court has earlier passed 2 orders in Criminal O.P.No.423 of 2007, dated 23.02.2007 and W.P.No.17602 of 2010, dated 21.06.2011, directing the criminal court to dispose of the proceedings in C.C.No.1 of 2000 within a time frame, the proceedings are still pending. The delay on the part of the Criminal Court should not be put against the petitioner herein and on this ground also, it would be appropriate to direct the respondents to promote the petitioner herein.

13. For all the foregoing reasons, the first respondent is directed to include the name of the petitioner in the panel for promotion to the post of Additional Registrar of Co-operative Societies and consequently, promote him, subject to any other disqualification apart from the pendency of the criminal proceedings. The respondents are at liberty to grant such a promotion on condition that the promotion would be subject to the decision of the proceedings in C.C.No.1 of 2000 pending on the file of Special Court under Prevention of Corruption Act Chennai. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Principal Secretary to Government,
Cooperation Food and Consumer Protection Department,
Secretariat,
Chennai - 09.

WEB COPY

2. The Registrar of Co-operative Societies,
Kilpauk,
Chennai -10.

+1 cc to The Government Pleader, Sr.No. 20982
+1 cc to Mr/K.Sathish Kumar, Advocate Sr.No.20229

W.P.No.17697 of 2018

SV(CO)
CSL/23.04.2019



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