

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5728 of 2016

P.Ramamoorthy

... Petitioner

Vs.

1.The Registrar of Co-operative Societies

O/o.Registrar of Co-op. Society

No.170, N.V.Natarajan Malaigai

Periya E.V.R.High Road

Kilpauk, Chennai-10

2.The Additional Registrar of Co-operative Societies

(Finance and Banking)

O/o. Registrar of Co-op. Society

No.170, N.V.Natarajan Malaigai

Periya E.V.R.High Road

Kilpauk, Chennai-10

3.The Joint Registrar of Co-op. Societies

O/o.The Joint Registrar of Co-op. Societies

No.3, Beach Road

Cuddalore

... Respondents

Prayer :The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his impugned proceedings Na.Ka.71362/2015/pa.tho.1 dated 26.10.2015 and quash the same and consequently, directing the respondent to consider the claim of the petitioner's promotion as Senior Inspector of Co-operative Societies with effect from 01.05.1995 on par with his juniors and to sanction and disburse all the consequential service and other monetary benefits and grant such other further relief.

Petitioner : Mr.G.Ilamurugu

Respondents : Ms.T.Girija, G.A. for RR1 to 3

O R D E R

This petition has been filed by the petitioner, seeking issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his impugned proceedings Na.Ka.71362/2015/pa.tho.1 dated 26.10.2015 and quash the same and consequently, directing the respondent to consider the claim

of the petitioner's promotion as Senior Inspector of Co-operative Societies with effect from 01.05.1995 on par with his juniors and to sanction and disburse all the consequential service and other monetary benefits and grant such other further relief.

2.The learned counsel for the petitioner submitted that the petitioner entered into service as Junior Inspector of Co-operative Societies through employment exchange under Rule 10A (1) of the Tamilnadu State Service Rules with effect from 06.12.1985 in the office of the Deputy Registrar of Co-operative Societies, Cuddalore and his appointment was regularised on 16.10.1989. The next avenue of promotion is the Senior Inspector of Co-operative Societies and for which he is eligible for 1995 panel as on 01.05.1995. However, he was not promoted due to the non completion of the departmental test. Till the crucial date for drawing of the said panel for the year 1995 namely 01.05.1995 there was no adverse remark against the petitioner and he was fully qualified for the said panel except the passing of departmental test i.e. District Office Manual Test (DOM). The Government also issued an order vide G.O.Ms.No.70 (Co-operation, Food and Consumer Protection) Department dated 18.03.1996 in which an exemption was given to those persons who did not pass the department tests and to consider them for promotion with retrospective effect as on 01.05.1995 Panel. Thus, the petitioner was fully qualified to the post of Senior Inspector of Co-operative Societies with effect from 01.05.1995 on par with his juniors. The next panel for the promotion will be in the year 01.05.1997 and there was no panel had drawn to the post of Senior Inspectors and however the Registrar of Co-operative Societies had drawn a supplemental panel to the Panel dated 08.08.1995 during the year 1998 so as to give promotion for those who have exempted by the said G.O. Dated 18.03.1996, vide proceedings in Na.Ka.54404/96 Pa. Tho.1 dated 26.03.1998 in pursuant to the G.O. For which the petitioner was qualified for promotion but he was deferred.

3.The learned counsel for the petitioner further submitted that his appeal before the 1st respondent on 15.04.1998 had been rejected by the 1st respondent for the reason that there was a pendency of criminal proceedings, which is not a bar for considering the delinquent officers for the purpose of the promotion. It is pertinent to note that there was no charge sheet pending against the petitioner by the investigation authority as on 24.01.2002 and thereby the petitioner submitted a review application to the 1st respondent on 28.12.2001, enclosing the order passed by the Judicial Magistrate-I, Cuddalore to the effect that there was no charge sheet filed against the petitioner. The respondent rejected the claim of the petitioner for promotion for the reason that he had been

inflicted with a punishment in a disciplinary proceedings vide proceedings of the Deputy Registrar of Co-operative Societies dated 23.03.1998. It is pertinent to note that there was no punishment order came to be issued or served on the petitioner either on the crucial date or on the date of G.O. dated 18.03.1996 or on the next crucial date for the promotion dated 01.05.1997 or on the date of approval of the panel namely 26.03.1998. The said punishment order passed by the Deputy Registrar of Co-operatives, Cuddalore in his proceedings bearing Na.Ka.7180/97 Pa.Tho. dated 23.03.1998 was served on the petitioner only on 06.04.1998. Even the alleged charge memo was issued under Rule 17(a) of TNCS (D&A) Rules which is also not a bar for promotion to the petitioner.

4.The learned counsel further submitted that the petitioner had been acquitted from the criminal cases by the Judgment of the learned Judicial Magistrate-1, Cuddalore in C.C.Nos.181 to 184 of 2006 dated 25.05.2015 and thus the petitioner is eligible to the post of Senior Inspector with effect from 01.05.1995 on par with his juniors and he is entitled to all the monetary retirement benefits with due promotion. Therefore, the petitioner submitted a representation to the respondent on 09.06.2015 and filed a writ petition in W.P.No.17934 of 2015 seeking for a direction to give promotion to the petitioner which was disposed of on 01.07.2015 with a direction to give a fresh representation. The petitioner retired from the service by attaining superannuation on 30.06.2015. The petitioner's name was included in the panel as on 01.05.2012 for promotion on the eve of his retirement by an order of the 1st respondent in proceedings No.RC.44663/2012/EMI(i) dated 29.06.2015 with effect from 01.01.2011 and not from 01.05.1995 as per G.O. dated 18.03.1996 for which the petitioner was fit for promotion as on 01.05.1995. However, in pursuant to the direction of this Court, the petitioner made a fresh representation to the 2nd respondent for granting promotion with consequential benefits with retrospective effect from 01.05.1995 under the impugned proceedings in Na.Ka.71362/2015/pa.tho.1 dated 26.10.2015, the 2nd respondent, once again rejected the claim of the petitioner Hence, the petitioner is before this Court.

5.In the counter affidavit filed by the 3rd respondent, it is stated that when the petitioner's name was ripe for consideration in the panel of Junior Inspector for promotion as Senior Inspectors as on 01.05.1995, the petitioner's name was not included in the above said panel as he had not passed the Departmental Test prescribed in the Special Rules for the Tamilnadu Cooperative Subordinate Service. In these circumstances, in G.O.Ms.No.70, Cooperation, Food and Consumer Protection Department dated 18.03.1996, exemption was granted from passing the Departmental Tests and District Office Manual

Test to the Junior Inspectors, who have passed the Special Qualification Examination conducted on 15.10.1989 for the regularization of the temporary service. Consequent to the above exemption granted by the Government, the name of the petitioner was considered in the Review Panel as on 01.05.1995, but his promotion was deferred in view of pendency of Criminal Case in Cr.No.12 of 1994. Further, the punishment of stoppage of increment of six months without cumulative effect imposed by the Deputy Registrar, Cuddalore in proceedings Rc.No.7180/1997, Pa.Tho, dated 23.03.1998 for the lapses committed by the individual, while he was working as Special Officer in Sedappalayam and Subramaniapuram PACCS during the year 1996, was pending at the time of consideration of his name in the above said review panel. Therefore, as per the instructions issued in Government Letter No.248, Personnel and Administrative Reforms Department, dated 28.10.1997, his promotion was deferred from the review panel. Therefore, as per the direction of this Court, dated 01.07.2015 in W.P.No.17934 of 2015, the request of the individual for inclusion of his name in the panel as on 01.05.1995, was examined carefully and rejected vide letter Rc.No.71362/2015, EM.1 dated 26.10.2015, he was not eligible for inclusion in the panel of Junior Inspectors for promotion as Senior Inspectors as on 01.05.1995. Hence, prays for dismissal of the same.

6.Heard the learned counsel on either side and perused the materials available on record.

7.After analysing the submissions and perusal of the materials placed before this Court, it is seen that the petitioner is eligible for promotion at the panel drawn on the crucial date i.e. 01.05.1995. From the facts emanated, the 1st respondent prepared the panel of Junior Inspector, for promotion as Senior Inspector by fixing the crucial date as on 01.05.1995 but the petitioner's name was not included as he had not passed the departmental test. Subsequent to the representation made by the similarly placed persons / employees, G.O.Ms.No.70, Cooperation, Food and Consumer Protection Department dated 18.03.1996, granted exemption from passing departmental test and District Office Manual (DOM) test to the Junior Inspectors, who have passed the special test on 15.10.1989 for regularization of services, pursuant to the government order. The petitioner's name was considered in the review panel as on 01.05.1995 but his promotion was deferred for the reasons that the petitioner has involved in a Criminal case in Crime No.12 of 1994, pending in C.C.Nos.181 to 184 of 2006, pending on the file of the learned Judicial Magistrate-I, Cuddalore and further. punishment was imposed on the petitioner by the District Registrar, Cuddalore in Rc.No.7180 /1997, Pa.Tho. dated 23.03.1998 for the lapses committed by the individual.

8.The learned Government Advocate has fairly on written instructions, submitted before this Court that as on the crucial date i.e. 01.05.1995, only the criminal case in Crime No.12 of 1994 was pending against the petitioner but no punishment or departmental proceedings have been initiated or pending against the petitioner. The petitioner was also acquitted from the criminal cases by the judgement of the learned Judicial Magistrate-1, Cuddalore in C.C.Nos.181 to 184 of 2006, dated 25.05.2015 and the said decision of the Judicial Magistrate-1 has become final as no further appeal has been preferred by the department.

9.In view of the acquittal of the petitioner from the aforesaid criminal case, there is no bar to consider the promotion of the petitioner as the crucial date viz., 01.05.1995. Therefore, in view of the aforesaid facts and circumstances, this court has no hesitation to quash the impugned proceedings.

10.In the result, the writ petition is allowed. The impugned order passed by the 2nd respondent in his proceedings Na.Ka.71362/ 2015/ Pa. Tho.1 dated 26.10.2015 is quashed. The 2nd respondent is hereby directed to consider the petitioner's name for inclusion in the panel for the year 1994-1995, if he is otherwise eligible, within a period of twelve weeks, from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To.

1.The Registrar of Co-operative Societies
O/o.Registrar of Co-op. Society
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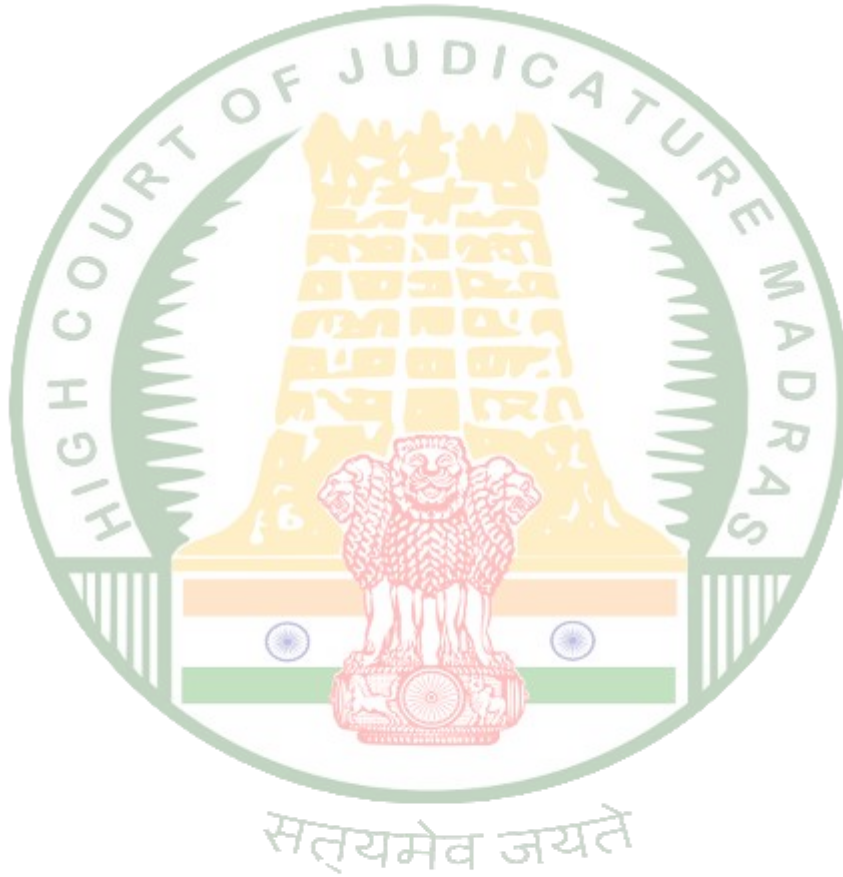
3.The Joint Registrar of Co-op. Societies
O/o.The Joint Registrar of Co-op. Societies
No.3, Beach Road,Cuddalore.

+1cc to Mr.G.Ilamurugu , Advocate SR.No. 101736

+1 cc to Spl Government Pleader coop Sr.No. 1012199

W.P.No.5728 of 2016

A.SK(28/01/2020)



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