IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.04.2019

Pronounced on : 15.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.2547 of 2018
and
WMP.No.3106 of 2018

M.Veerasamy ... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by the Principal Secretary,
Finance Department,
Fort St. George,
Chennai-600 009.

2.The Director of Co-operative Audit,
O/o.The Director of Co-operative Audit,
Kamaraj Salai,
Chennai-600 005.

3.The Assistant Director of Co-operative Audit,
O/o.Director of Co-operative Audit,
Thanjavur. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent made in Government Letter No.20460/Nidhi (Ku.Tha)/2017 dated 17.11.2017, to quash the same and to consequently direct the respondents to settle all the retiral benefit dues including pension fixation forthwith thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Ms.T.Girija, GA

O R D E R

The petitioner's request for retirement benefits including pension fixation came to be rejected on the ground that the petitioner had not passed the accounts test for subordinate officers Part-I till his date of retirement, which is compulsory as per Adhoc Rules for the purpose of probation and further promotion, through the impugned order dated 17.11.2017, which is under challenge in the present Writ Petition.

2. The brief facts of the case is as follows:

a) The petitioner herein was selected through Employment Exchange and appointed as Junior Inspector of Co-operative Societies under Rule 10(a)(i) of the Tamil Nadu State and Sub Ordinate Services Rules in the year 1976. Subsequently, the petitioner was transferred to the Co-operative Audit Department after bifurcation and he was re-designated as Junior Co-operative Auditor.

b) For the purpose of regularisation of the services of the temporary Junior Inspectors of Co-operative Societies, a special qualifying examination was conducted by the Tamil Nadu Public Service Commission pursuant to orders in G.O.Ms.No.271 Cooperation, Food & Consumer Protection Department dated 10.11.1988 and among the 351 Junior Co-operative Auditors, 330 of them passed, while the remaining 21, including the petitioner, had failed in the examination. While the passed candidates were regularised as contemplated in G.O.Ms.271 dated 10.11.1988 with effect from 16.10.1989, the failed candidates including the petitioner had sought for a similar relief before the Tamil Nadu Administrative Tribunal (hereinafter referred to as the 'Tribunal'). In compliance of the orders of the Tribunal passed in O.A.No.4590 of 1995 dated 21.10.2003, the petitioner's services were also regularised with effect from 16.10.1989 through G.O.Ms.445, Finance (CA) Department dated 20.12.2005, though he had not passed the examination. In this background, the petitioner when reached the age of superannuation on 31.10.2008, he was not extended with the benefits of pay revision and pension which prompted him to file a writ petition in W.P.No.8222 of 2017 and by an order dated 07.06.2017, this Court had directed the respondents to consider his representation seeking for the monetary benefits. Pursuant to such orders of this Court, the impugned order has now been passed.

3. The learned counsel for the petitioner submitted that since the petitioner's services was regularised, the reason cited by the respondents that he has not passed the Account Test for Subordinate Officers Part-I for his declaration and further promotion is unsustainable. The learned counsel submitted that since the petitioner's services came to be regularised from 16.10.1989 and the relevant rules came to be introduced much after the retirement of the petitioner, the impugned order placing reliance on such subsequent rules cannot be sustained. It is also his submission that when the petitioner has been treated in par with the other successful candidates who had passed the special qualifying examination conducted by TNPSC, he

should also be extended with a similar treatment, in the absence of which, it would amount to discrimination.

4. The learned Government Advocate, on the other hand submitted that, the petitioner has failed in the special qualifying examination and his regularisation was done only pursuant to the order of the Tribunal. As such, he cannot claim the benefits of services extended to other employees, who had passed the special qualifying examination. It is her further submission that the petitioner had not passed the Account Test till the date of his retirement, for the purpose of declaration of probation and further promotion, as per the Adhoc Rules which is compulsory. In view of this, there is no infirmity in the impugned order. Hence, the Writ Petition is liable to be dismissed.

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

6. The narrow compass in which the present Writ Petition lies is on the point as to whether the regularisation of the petitioner's services based on Court orders can be differentiated from the regularisation extended to other employees, who were regularised through Government Orders viz., G.O.Ms.86, Cooperation, Food and Consumer Protection Department dated 25.01.1993, with effect from 16.10.1989.

7. When the petitioner had failed in the special qualifying examination and were not extended with orders of regularisation, they had approached the Tribunal seeking for regularisation of their services in O.A.No.3493 of 1990. The Tribunal, through its order dated 21.10.2003, passed in the case of a similarly placed candidate, had directed to regularise his services, inspite of the fact that he had not passed the special qualifying examination. Since the petitioner's case was not considered, a Writ Petition in W.P.No.31461 of 2004 came to be filed in which orders were passed, directing the respondents to consider all the cases of the petitioners, by complying with the orders of the Tribunal dated 21.10.2003 in O.A.No.4590 of 1995. It is pursuant to the orders of this Court, that the petitioner's services came to be regularised.

8. In the meantime, the Government had issued an order in G.O.Ms.No.253, Finance (Co-operative Audit) Department, dated 31.03.1986, framing certain Adhoc Rules and as per Rule 9 of the Adhoc Rules, every person appointed to the post of Junior Co-operative Auditor has to be placed under probation for a total period of two years on duty, within a continuous period of three years and for the purpose of declaration of probation, one of the pre-condition was that the employee should pass the Account Test for Subordinate officers-Part I, as per Rule 11.

9. The main ground on which the respondents had denied the benefits to the petitioner is that the petitioner's probation has not been declared and that he has not passed the account test for the required post and further that the petitioner is not exempted from passing the account test, since he was regularised through Court orders. Such a ground cannot be acceptable for the following reasons.

10. The Government in G.O.Ms.626 dated 26.07.1995, had directed that the Junior Co-operative Auditors, who had passed the special qualifying examination conducted by the Tamil Nadu Public Services Commission, shall be exempted from passing Account Test Subordinate Officers Part I so as to enable them to commence and satisfactorily get their probation declared and for further promotion as Senior Co-operative Auditor. Such an exemption is now denied to the petitioner through the impugned order on the ground that the petitioner had not passed the special qualifying examination. When this Court had directed the respondents to comply with the orders of the Tribunal in O.A.No.4590 of 1995, the petitioner's services came to be regularised with effect from 16.10.1989, that is, from the same date on which the other Junior Co-operative Auditors were regularised after passing the special qualifying examination. It is needless to point out that the intention behind the court orders was to place the petitioner in par with the other Junior Co-operative Auditors, who had passed the special qualifying examination. The moment the respondents had chosen to comply with the orders of this Court by regularising the petitioner with effect from 16.10.1989, they had impliedly condoned the failure of the petitioner in passing the special qualifying examination. If the respondents were of the view that the petitioner is not entitled for regularisation since he has not passed the qualifying examination, the only option available at that point of time to the respondents was to challenge the order of this Court passed in W.P.No.31461 of 2004 directing them to comply with the orders of the Tribunal in O.A.No.4590 of 1995 dated 21.10.2003. But, when the respondents had chosen to comply with the directions of this Court made in W.P.No.31461 of 2004, it goes without saying that they had relaxed the condition that a pass in the special qualifying examination is mandatory for the purpose of regularisation. Having condoned such a pre-condition by regularising the petitioner, knowing fully well that he had not passed the special qualifying examination and having chosen to comply the orders of this Court in W.P.No.31461 of 2004, there can be no justification on their part now to quote the non passing of the special qualifying examination as an embargo.

11. I am unable to appreciate the reasons in the impugned order that the petitioner has not completed his probation period, when his services have been regularised. There cannot be

an act of regularisation, unless and until the employees successfully completes his period of probation. If no specific orders of completion of probation are passed, but when the department chooses to regularise such an employee, it is implied that the probation of the candidate has been declared to have been successfully completed. Since the respondents had chosen to regularise the petitioner with effect from 16.10.1989 in par with other successful candidates, the petitioner is deemed to have been completed his probation, on such date of regularisation.

12. Now that this Court had found that the petitioner is deemed to be in par with other successful candidates, who had passed the special qualifying examination and that his period of probation has been impliedly declared to have been successfully completed, the exemption extended to candidates from passing the Account Test Subordinate Officers Part-I under G.O.Ms.626, dated 26.07.1995, would automatically apply to the petitioner also. Therefore, the reasons cited in the impugned order that the petitioner's probation has not been declared and that he cannot seek for exemption, since he is not successful in the special qualifying examination, cannot be sustained.

13. For all the foregoing reasons, the impugned order passed by the first respondent in Government Letter No.20460/Finance (CA)/2017, Finance (Cooperative Audit) Department, dated 17.11.2017 is hereby set aside. Consequently, the petitioner would be entitled to all the consequential retiral benefits including pension fixation. The second respondent herein is directed to forthwith disburse of the retiral and pensionary benefits along with arrears as expeditiously as possible, in any event, within a period of four weeks from the date of receipt of a copy of this order.

14. With the above observations and direction, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Principal Secretary,
State of Tamil Nadu,
Finance Department,
Fort St. George, Chennai-600 009.

2.The Director of Co-operative Audit,
O/o.The Director of Co-operative Audit,
Kamaraj Salai,
Chennai-600 005.

3.The Assistant Director of Co-operative Audit,
O/o.Director of Co-operative Audit,
Thanjavur.

+1cc to the Spl.Government Pleader(TAXES), S.R.No.60205
+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.60128(27/08/2019)

W.P.No.2547 of 2018
and
WMP.No.3106 of 2018

EV(CO)

RRS(20/08/2019)