

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:21.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.33372 of 2018

C.S.Srinivasan

...Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies
Vellore Region, Vellore District.

2.Vellore District Central Co-operative Bank Limited,
Rep. By its Joint Registrar/Managing Director
No.3, Officers Lane, Vellore - 632 001. ...Respondents

Prayer: Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorari, after calling for the Calling for the concerned records from the 1st respondent quash the order of the 1st respondent dated 24.09.2018 bearing Revision Petition Na.Ka.2915/2017 A2 Revision Petition No.9/2017 as illegal arbitrary contrary to law and consequently direct the 2nd respondent to promote the petitioner to the post of Assistant with effect from 30.10.2013 with all consequential benefits of seniority arrears of salary and other benefits

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

ORDER

The petitioner was appointed as Office Assistant in the 2nd respondent Bank in 1997 and his probation was declared on 05.05.1999. He completed 10th standard in 1994 and studied 12th standard during academic year 1994 - 1996. The petitioner did not pass in all the papers and having failed in four subjects. During the service in the 2nd respondent Bank, the petitioner appears to have completed B.Com. (Cooperation) through open University in 2004. He also completed D.C.A. in 2011. According to the petitioner, despite his qualification, he was not given promotion to the post of Assistant.

2.The next avenue of promotion to the petitioner was to the post of Assistant. The petitioner therefore requested the Bank to consider his claim for promotion which was rejected by an order dated 16.04.2013 on the ground that the petitioner did not complete 12th standard before joining B.Com. (Cooperation). In the circumstances, the petitioner wrote the 12th standard and cleared all the arrears of papers during September 2013 and again made a representation to promote him to the post of Assistant. However, the 2nd respondent, by order dated 03.01.2014, rejected the claim of the petitioner on the ground that he did not complete his education in 10 + 2 + 3 pattern as laid down by the Government vide G.O.(Ms)No.107 dated 18.08.2009.

3.Being aggrieved by the rejection order, once again the petitioner preferred a Revision Petition under Section 151 of the Tamil Nadu Co-operative Societies Act, challenging the order of the 2nd respondent dated 03.01.2014. The said Revision Petition came to be rejected by order dated 02.01.2015. Thereafter, the petitioner was constrained to approach this Court in W.P.No.18977 of 2015 challenging the order of the Revisional Authority. The writ petition was allowed, by an order dated 19.10.2016, by holding that the petitioner having completed +2 in the regular stream and B.Com. Degree obtained by him was a valid one and that he was qualified for promotion to the post of Assistant. Thereafter, the 2nd respondent granted promotion to the petitioner to the post of Assistant by order dated 30.11.2016.

4.The grievance of the petitioner in this writ petition is that though he was qualified to be promoted to the post on 30.10.2013 when there was a vacancy in the post of Assistant, but he was granted promotion to the post of Assistant only with effect from 30.11.2016 and not from 30.10.2013 and according to the petitioner, earlier his rejection orders came to be passed which were not sustainable in law and ultimately, the petitioner succeeded before this Court and this Court has held that the petitioner was eligible to be promoted as Assistant.

5.In the above circumstances, the petitioner once again approached the 2nd respondent requesting to give him promotion with effect from 30.10.2013 and also give him all the consequential monetary benefits with due seniority etc. Since there was no reply, the petitioner was once again constrained to approach the Revisional Authority and filed a Revision Petition before the 1st respondent under Section 153 of the Tamil Nadu Cooperative Societies Act. However, the Revision Petition is not decided in considerable time. In the circumstances, the petitioner once again approached this Court in W.P.No.2077 of 2018. This Court, by an order dated 19.07.2018, disposed of the writ petition by directing the 1st respondent to pass orders on

Revision Petition filed by the petitioner on merits. In pursuance of the direction passed by this Court, the 1st respondent passed the order on 24.09.2018 rejecting his revision petition on the ground that if the promotion is granted to the petitioner with effect from 30.10.2013, it would unsettle the settled seniority position and it will create much administrative difficulties. The said order is challenged before this Court in the present writ petition.

6.Mr.Balan Haridas, learned counsel appearing for the petitioner would submit that once the petitioner's qualification has been found to be eligible for appointment to the post of Assistant and his initial writ petition in W.P.No.19977 of 2018 was allowed by this Court holding that the degree obtained by the petitioner was a valid one and the petitioner was qualified for promotion to the post of Assistant, the natural corollary of such direction was to grant promotion to the petitioner from the date when it was due i.e. on 30.10.2013, when the order came to be passed in 2016, the benefit of promotion is restricted from the date of the order i.e., 19.10.2016 and not from the due date of promotion to the petitioner.

7.The learned counsel would also submit that once the right of promotion of the petitioner was established, such right cannot stand negated because of certain administrative difficulties faced by the Bank. It is always possible for the Bank to grant promotion to the post of Assistant by giving due seniority and grant all consequential benefits notionally. However, it is certainly not open to the Bank to deny the benefit of promotion to the petitioner in the post of Assistant with effect from 30.10.2013, when it was not the fault of the petitioner that his earlier requests were rejected prior to 2016. Therefore, he would submit that the petitioner's claim is liable to be allowed and the impugned order is liable to be set aside.

8.Per contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents would submit that the impugned order says that any retrospective effect of promotion to the petitioner as Assistant with effect from 30.10.2013, would unsettle the settled seniority position among the Assistants and would also lead to administrative chaos, with cascading effect which could be avoided if the petitioner's claim for promotion with effect from 2013 is not considered in the circumstances of the case. According to the learned Special Government Pleader appearing for the respondents, in the interest of all concerned that the promotion granted to the petitioner with effect from 30.11.2016 was in order and therefore, the same does not call for any interference from this Court.

9.This Court considered the submissions of the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

10.Admittedly, the qualification obtained by the petitioner initially was found to be in order by this Court and a direction was issued by this Court on 19.10.2016 holding that the petitioner was qualified for promotion to the post of Assistant. Once the petitioner was found to be qualified for promotion to the post of Assistant, the natural corollary of such direction would mean to consider the request of the petitioner for grant of promotion with effect from the date when the subject promotion was due to him and not from the subsequent date. In this case, it is not in dispute that the petitioner was entitled to be considered for promotion with effect from 30.10.2013. The only point of objection by the respondents is that if such promotion is granted with effect from 30.10.2013, it will result in unsettling of settled seniority and other consequential adverse effect on the administration of the Bank.

11.This Court is unable to appreciate such stand taken by the respondents, when admittedly the petitioner was found to be qualified from the date when the promotion was due to him in 2013. As rightly contended by the learned counsel for the petitioner that once the right of the petitioner was established beyond all doubts that he was qualified to be promoted to the post of Assistant in 2013, any objection in regard to such consideration for grant of promotion from 2013 is not a valid objection, which could be countenanced in law. The right of the petitioner to be considered for promotion on a particular date when it was due to him, cannot stand negated by citing certain administrative difficulties, which the Bank may face on such consideration.

12.On the whole, this Court is of the considered view that the petitioner has made out a clear case for grant of relief and the impugned order passed for the stated reason appears to be not a valid one which can be countenanced by this Court both in terms of law and in terms of facts of the case and therefore, the impugned order is without any merits and hence, the same is hereby set aside. Consequently, the respondents are directed to grant promotion to the petitioner as Assistant with effect from 30.10.2013 by notionally fixing his seniority and monetary benefits and grant him all other attendant benefits on such fixation of seniority. It is also made clear that the petitioner is not entitled to the arrears of differential wages from 30.10.2013 till the date, he was actually promoted in 2016 but he is entitled to all other attendant benefits. The respondents are also directed to pass appropriate orders, as directed above,

within a period of four weeks from the date of receipt of a copy of this order.

13.The Writ Petition stands allowed, as indicated above. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Sgl

To

- 1.The Joint Registrar of Co-operative Societies
Vellore Region, Vellore District.
 - 2.The Joint Registrar/Managing Director
Vellore District Central Co-operative Bank Limited,
No.3, Officers Lane, Vellore - 632 001.
 - 3.The Government Advocate,
High Court, Madras.
- +1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.72032
+1cc to Mr.Balan Haridas, Advocate SR.No.71446
+1cc to Government Pleader SR.No.72095

W.P.No.33372 of 2018

RK(CO)
GMY(16/09/2019)

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