



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)No.21737 of 2019

WEB COPY

Malairaj

... Petitioner

Vs.

1.The Joint Registrar/Managing Director,
Sivagangai District Central Co-operative Bank,
Sivagangai.

2.The Deputy Registrar,
Sivagangai District Central Co-operative Bank,
Sivagangai.

... Respondents

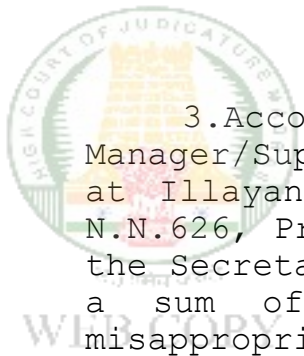
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to consider the petitioner's representation dated 04.09.2019 and 29.09.2019 within a time frame that may be stipulated by this Hon'ble Court and directing the respondents to grant proper promotion to the petitioner, on the basis of Surcharge proceedings order passed by the second respondent dated 28.09.2015 and interim stay granted by this Court in Crl.M.P(MD)No.9128 & 9171 of 2016 in Crl.O.P(MD)No.18327 & 18389 of 2016 dated 26.09.2016 and Disciplinary proceedings order passed by the first respondent dated 26.10.2018 and 30.10.2018.

For Petitioner : Mr.R.Udhayakumar
For R1 : Mr.D.Shanmugaraja Sethupathy

ORDER

This writ petition is filed for direction to the first respondent to consider the petitioner's representations dated 04.09.2019 and 29.09.2019, and further direction to the respondents to grant proper promotion to the petitioner on the basis of Surcharge proceedings issued by the second respondent dated 28.09.2015 and interim stay granted by this Court in Crl.M.P(MD) No.9128 & 9171 of 2016 in Crl.O.P(MD)No.18327 & 18389 of 2016 dated 26.09.2016 and Disciplinary proceedings issued by the first respondent, dated 26.10.2018 and 30.10.2018.

2.Mr.D.Shanmugarajasethupathy, learned counsel takes notice for the first respondent. By consent of parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

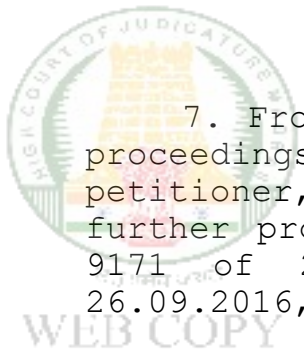


3. According to the petitioner, he was working as Assistant Manager/Supervisor in Sivagangai District Central Co-operative Bank at Illayankudi Branch-I. While he was working as Supervisor in N.N.626, Primary Agriculture Co-operative Credit Society, Kannanoor, the Secretary of the said Society, namely Rajendran, misappropriated a sum of Rs.34,03,472/-. The said Rajendran admitted the misappropriation and paid the said amount before the higher officers on 04.11.2013. The higher officers of the society gave a complaint against 13 officers, including the Special Officers, Supervisors and the petitioner before the Superintendent of Police, Commercial Crime Investigation Wing, Chennai. The Superintendent of Police, Chennai, forwarded the complaint to the Inspector of Police, Commercial Crime Investigation Wing, Sivagangai District and a case was registered against 14 accused in Cr.No.3 of 2014, for the offences under Sections 403, 406, 408, 420, 468, 477(A), 120(B) r/w 34 of IPC on 26.09.2014. The police filed the separate final reports against the petitioner and three others in C.C.No.141 & 142 of 2015 before the Judicial Magistrate No.II, Sivagangai, on 10.08.2015. Thereafter, the petitioner filed Crl.O.P(MD)No.18327 & 18389 of 2016 to quash the criminal case. This Court, by order dated 26.09.2016, granted interim stay of further proceedings of the criminal case. In the meantime, the second respondent initiated surcharge proceedings, vide proceedings dated 28.09.2015, exonerating the petitioner and others, except the Secretary Rajendran. After conclusion of the domestic enquiry, a punishment of censure was imposed on the petitioner on 26.10.2018 and 30.10.2018.

4. In the year 2016, the respondents prepared the seniority list for promotion. The petitioner's name was at Serial No.16. The petitioner was not considered for promotion stating that pursuant to the interim stay granted in the criminal case, the disciplinary proceeding is pending and hence, the petitioner is not eligible for promotion. Therefore, junior most 10 persons were promoted in the year 2016 subsequent to punishment of censure was imposed.

5. The first respondent again in the year 2019 has not considered the petitioner for promotion on the ground that criminal case is pending against him. He made a representation on 04.09.2019, enclosing the copies of the interim order granted in Crl.M.P(MD)Nos.9128 & 9171 of 2016 in Crl.O.P(MD)No.18327 & 18389 of 2016, dated 26.09.2016, staying the further proceedings of the criminal case, the order dated 28.09.2015, exonerating the petitioner in the surcharge proceedings and the order of punishment imposed on him in the disciplinary proceedings. The respondents have not passed any orders on the representation, hence, the petitioner has come up with the present writ petition.

6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.



7. From the materials on record, it is seen that the surcharge proceedings and the disciplinary proceedings initiated against the petitioner, were concluded. This Court has granted stay of the further proceedings of the criminal case in CrI.M.P(MD)Nos.9128 & 9171 of 2016 in CrI.O.P(MD)No.18327 & 18389 of 2016, dated 26.09.2016, filed by the petitioner.

8. Considering the above facts, without deciding the issue on merits, it is suffice to issue a direction to the respondents to consider the representations of the petitioner, dated 04.09.2019 and 29.09.2019 and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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+1 CC to M/s.R.UDHAYAKUMAR, Advocate SR-92315.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate SR-92620.

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