

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4202 of 2019
and C.M.P.No.26173 of 2019
and Contempt Petition No.1391 of 2019

W.A.No.4202 of 2019

- 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. .. Appellants/Respondent

-vs-

AG.Chandrasekar .. Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 05.03.2019 in W.P.No.17697 of 2018 on the of this Court.

W.P.No.17697/2018:

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 Appellants : Mr.S.T.S.Murthi
Addl. Adv. General
for Mr.L.P.Shanmugasundaram
Spl.G.P. (Co-op.)

For Respondent : Mr.L.Chandrakumar
for Mr.K.Sathish Kumar

JUDGMENT
(Delivered by Subramonium Prasad.J)

The State by way of this appeal seeks to challenge the order dated 05.03.2019 in W.P.No.17697 of 2018, whereby the learned Single Judge has directed the appellant to include the name of the respondent / writ petitioner in the panel for promotion to the post of Additional Registrar of Cooperative Societies and consequently, promote him, subject to any other disqualification apart from the pendency of the criminal proceedings pending on the file of Special Court under the Prevention of Corruption Act, Chennai, under the following Sections 120(b), r/w 409, 409 r/w, 467, 467 r/w, 471, 46 r/w 109, 477 (A) IPC & 13(2) r/w 13 (1)(d) r/w 109, 409, r/w 109, 467, 467 r/w 109, 467 r/w 471, 477 (A), PC & 13(2) r/w 13(1)(d) of the IPC.

2.The facts in brief leading to the writ appeal are as under:-

The respondent / writ petitioner was appointed in the Triplicane Urban Co-operative Society Ltd. at Chennai. On the allegation that there were irregularities in purchase of Cashew, an F.I.R. was registered against the writ petitioner/respondent under various provisions of IPC and the Prevention of Corruption Act and charge sheet has been filed and trial has commenced proceedings. Simultaneously, departmental proceedings were also initiated against the petitioner under Rule 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The departmental proceedings came to be dropped through G.O.Ms.No.257, Cooperation, Food and Consumer Protection Department, dated 02.12.2002. However, the criminal proceedings initiated in the year 2000 are still continuing.

3. After the disciplinary proceedings were dropped, the writ petitioner / respondent was promoted from the post of Deputy Registrar to the post of Joint Registrar of Co-operative Societies. When the turn for the promotion from Joint Registrar to Additional Registrar came, the writ petitioner's name was not included in the panel list for the year 2012-13 on the ground that criminal proceedings are pending against the petitioner. The petitioner gave a representation on 21.12.2017 contending that since the departmental proceedings have been dropped against the writ petitioner, and it would take several years for the criminal proceedings and the petitioner's name should be included in the panel list for the post of Additional Registrar for the year 2012-13. Since the petitioner's name was not included, the petitioner has filed the instant writ petition for a writ of mandamus directing the appellants to include his name in the panel for promotion to the post of Additional Registrar, Cooperative Societies and consequently promote him in the

existing vacancy by considering his representation dated 21.12.2017.

4.The learned Single Judge allowed the writ petition by directing the appellants herein to include the name of the petitioner in the panel for promotion to the post of Additional Registrar of Cooperative Societies and consequently, promote him, subject to other disqualification, apart from the pendency of the criminal proceedings. It is this order which is under challenge in this instant appeal.

5. Assailing the order of the learned Single Judge, Mr.S.T.S.Murthi, learned Additional Advocate General, would contend that Section 7 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, lays down the procedure for making a panel of approved candidates. Section 7 contemplates that all appointments made by transfer from one category to another category in the same service shall be made by the appointing authority from the list of approved candidates and such list shall be prepared in the manner specified in Schedule XI by the appointing authority or any other authority empowered in the special rules in that behalf. Schedule XI lays down the procedure for preparation of the list. Sub-Clause (5) of Chapter II of Part-A to Schedule XI which is relevant for the instance is reproduced hereinunder:-

(5) Mere filing of cases in Courts by the appropriate Investigating Authority against a member of service, shall not be a bar for inclusion of his name in the approved list. If specific charges are framed or charge sheet has been filed in the criminal case on the crucial date his name shall not be considered for inclusion in the approved list."

6. A perusal of the aforesaid rule would show that if specific charges are framed or a charge sheet has been filed in the criminal case on the crucial date, the name of the candidate cannot be considered for inclusion in the approved list. The learned Additional Advocate General would, therefore, contend that in view of the specific bar in the aforementioned rule, the name of the petitioner could not be included and therefore, the order of the learned Single Judge is contrary to law.

7. Per contra, Mr.L.Chandrakumar, learned counsel appearing for the respondent/writ petitioner would submit that when the petitioner's name was not included for promotion to the post of Joint Registrar, the petitioner approached this Court by filing W.P.No.13579 of 2000. He would state that despite the fact that identical rules were in existence, this Court had allowed the writ petition with a direction to consider the petitioner for the post of Joint Registrar. He would, therefore, state that in

view of the said judgment, there is no impediment in considering the petitioner for the post of Additional Registrar also. He would state that the State Government is bound by the judgment in W.P.No.13579 of 2000.

8. We have heard the learned counsel for parties. Sub-Clause (5) as extracted hereinabove is a clear bar for the inclusion of the name of the petitioner. The learned Single Judge, in the order impugned, has directed the appellants to promote the petitioner as Additional Registrar subject to other disqualification, which could have been done. The petitioner's right, at best, is to be considered for the inclusion in the panel for promotion and he cannot claim any right to be appointed for that post. Therefore, in our opinion, the order of the learned Single Judge directing the appellant to promote the writ petitioner deserves to be set aside.

9. However, this Court cannot lose sight of the fact that 19 years have passed and only two witnesses out of 43 witnesses have been examined in the criminal case. In such a view of the matter, the question that arises is as to whether the writ petitioner must be made to wait endlessly till the criminal case is over.

10. The Hon'ble Supreme Court, in the case of Union of India vs. K.V. Janakiraman, reported in (1991) 4 SCC 109, had laid down the sealed cover procedure. It will be useful to reproduce the relevant paragraphs 16 and 17, which are as under:-

"15. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us.

The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) ...

(3)

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before."

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions.

11. As stated earlier, the writ petitioner / respondent cannot be made to wait endlessly till the criminal case is over.

In view of the law laid down by the Hon'ble Supreme Court in the aforementioned judgment contemplating the sealed cover procedure, we are of the view that the appellants may be directed to consider the case of the petitioner following the sealed cover procedure as stipulated by the Hon'ble Supreme Court.

12. In this view of the matter, we set aside the order dated 05.03.2019 passed by the learned Single Judge directing the appellants to promote the petitioner and the appellants are hereby directed to consider the case of the writ petitioner for the panel of promotion to the post of Additional Registrar for the year 2012 - 2013 and to keep the same in a sealed cover till the conclusion of the criminal case.

13. The Writ Appeal is, accordingly, allowed to the extent indicated above. No costs. Consequently, C.M.P.No.26173 of 2019 is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sra
To

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. सत्यमेव जयते

+1 CC to Mr.K.Sathish Kumar, Advocate sr 12055.

+1 CC to The Special Government Pleader sr 12381.

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W.A.No.4202 of 2019

SR(CO)
SP(10/03/2020)