



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2020

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.7506 of 2020

WEB COPY

M.Kaliamoorthy

...Petitioner

-Vs-

1.The Registrar of Co-operative Societies,
170, E.V.R.High Road,
Kilpauk,
Chennai.

2.The Managing Director/Joint Registrar of
Co-operative Societies,
Tiruchirapalli District Central Co-operative Bank Ltd.,
Trichy,
Trichy District.

3.The President,
Tiruchirapalli District Central Co-operative Bank Ltd.,
Trichy,
Trichy District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the second respondent to promote the petitioner as Assistant Manager in the existing vacancy in the light of order made in W.P.No.17697 of 2018 dated 05.03.2019 by considering the petitioner's representations dated 16.03.2020 and 29.06.2020 within the period that may be stipulated by this Court.

For Petitioner	: Mr.C.Venkateshkumar for M/s.Ajmal Associates
For R1	: Mr.A.Thiyagarajan, Government Advocate
For R2 & R3	: Mr.D.Shanmugaraja Sethupathi

ORDER

The prayer sought for herein in this writ petition is for a Writ of Mandamus directing the second respondent to promote the petitioner as Assistant Manager in the existing vacancy in the light of the order made in W.P.No.17697 of 2018, dated 05.03.2019 by considering the petitioner's representations, dated 16.03.2020 and 29.06.2020 within the period that may be stipulated by this



2. Heard Mr.C.Venkateshkumar, learned counsel appearing for the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing for the first respondent and Mr.D.Shanmugaraja Sethupathy, learned counsel appearing for the respondents 2 & 3.

WEB COPY

3. The short facts leading to the filing of this writ petition are as follows:-

The petitioner is working at the second and third respondents as Supervisor. His case is that, in the year 2014 with regard to some charges framed against him, a criminal case is pending and in respect of the same, disciplinary proceedings was also initiated by the respondents and in that, when proceedings which originally ended punishment of stoppage of increment for two years without cumulative effect, subsequently on appeal, the said punishment awarded against the petitioner has been modified into one of Censure. Even the period of punishment has already been over and absolutely, there is no impediment for the petitioner to be considered for further promotion in the next higher category of Assistant Manager.

4. In this context, it is the further case of the petitioner that, merely because a criminal case is pending that would not stand in the way of the respondent to consider the promotion of the petitioner in view of the completion of the disciplinary proceedings and similar such cases were considered by the respective employers, there also promotions have been considered for those cases against whom criminal case was pending for long time. Therefore, seeking a Writ of Mandamus to consider his candidature to the post of Assistant Manager irrespective of the fact that the criminal case is pending against him, the petitioner has come up with the present writ petition.

5. The learned counsel appearing for the petitioner would submit that, the disciplinary proceedings was ended in Censure and therefore, there is no impediment for promotion to the post of Assistant Manager. So far as the pendency of the criminal case is concerned, the learned counsel for the petitioner has relied upon two decisions. One is W.P(MD)No.17697 of 2018 (**AG.Chandrasekar vs. The Principal Secretary to Government and another**), where the learned Judge of this Court considering a similar plea has given a direction to the following effect:-

"13. For all the foregoing reasons, the first respondent is directed to include the name of the petitioner in the panel for promotion to the post of Additional Registrar of Co-operative Societies and consequently, promote him, subject to any other disqualification apart from the pendency of the criminal



proceedings. The respondents are at liberty to grant such a promotion on condition that the promotion would be subject to the decision of the proceedings in C.C.No.1 of 2020 pending on the file of Special Court under Prevention of Corruption Act, Chennai. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs."

6. Another one is W.P(MD)No.6677 of 2020 **(M.P.Karthikeyan vs. The Registrar of Co-operative Societies, Chennai and two others)**, where also a direction was given to the effect that when the representation of the petitioner was considered by the second respondent, opportunity has to be given to the petitioner to explain his circumstances and thereafter, necessary orders be passed therein.

7. However, the learned Standing counsel appearing for the respondents 2 & 3 and the learned Government Advocate appearing for the first respondent would submit that, the admitted fact is that, the criminal case is yet to be over and still is pending against the petitioner. Even though the disciplinary proceedings ended in Censure, insofar as the pendency of the criminal case is concerned, it is not known at this juncture as to whether it will end in any punishment or not. Therefore, normally, this kind of case, where a criminal case is pending against the erring employees, promotion cannot be granted. They would also submit that, apart from the said reason, as on date, there is no consideration for the promotion to the post of Assistant Manager, as there is no vacancy arises now and if at all any vacancy is arises, if consideration is shown, only at the time, who are all eligible candidates, who are fit for promotion, would be considered. Therefore, for the present, such eventuality does not arise. Therefore, the prayer sought for by the petitioner cannot be granted, they contended.

8.I have considered the rival submissions made by both sides and perused the materials placed before this Court.

9. That two cases referred to by the learned counsel for the petitioner, no doubt dealt with identical situation and in one case, a direction was given by the learned Judge in W.P.No.17697 of 2018, where the fact remains that the pendency of the criminal case was for a very longtime for more than 10 years and therefore, such direction was given. Insofar as the direction given in W.P (MD)No.6677 of 2020 is concerned, it was only directed to consider the representation of the said petitioner on merits, as to whether the petitioner in that case would be eligible for consideration for promotion.



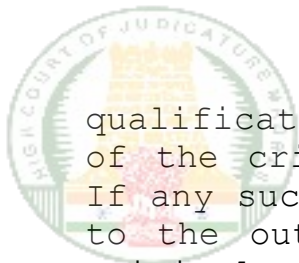
10. Here, in this case, admittedly the disciplinary proceedings ended in Censure. Therefore, there cannot be any impediment on the petitioner to be considered for promotion, however, a criminal case is pending. As has been rightly pointed out by the learned counsel for the respondents the outcome of the criminal case as of now is not known, therefore, this kind of promotion would be withheld. However, it would take several years for the criminal proceedings to reach the stage of finality. If at all any promotion is given subsequently, that will be only a notional promotion. In order to balance the situation on all times, depending upon the merits of the case, the Courts are issuing the directions to consider the promotional avenue of the employee. If no disciplinary proceeding is pending and only criminal case is pending and in that case, if the employee can be considered unmindful of the pending of the criminal case. This is what exactly referred to in the case in W.P(MD)No.6677 of 2020 by the petitioner.

11. However, in the present case, according to the learned counsel for the respondents 2 & 3 there is no vacancy of the Assistant Manager available as of now and therefore, it is submitted that, even there is no proposal mooted by the Administration for filling up those Assistant Manager post by way of giving promotion. In other words, there is no move for giving any promotions to the post of Assistant Manager from the feeder category where the people like the petitioners are working.

12. Normally, once vacancy arises and one of the method to fill up that vacancy is by way of promotion by feeder category, every year panel would be prepared and as per the seniority as well as the merit, promotion would be given.

13. In the present case, with regard to other eligibility criteria, especially, seniority is concerned, the petitioner claims to be in number one position and therefore, there cannot be any impediment to the respondents to consider his promotion to the post of Assistant Manager.

14. In view of the above circumstances, this Court feels that the requests of the petitioner as has been made in the representation dated 16.03.2020 can very well be considered in the light of the aforesaid discussion and the earlier orders passed by this Court. In this regard, if the respondents 2 & 3 are not having any immediate proposals to fill up the post of Assistant Manager, whenever they take the task of filling up the post of Assistant Manager by way of promotion, the candidature of the petitioner shall be taken into account and also be considered to the post of Assistant Manager on the basis of seniority and other



qualifications, to fill up the post. In that case, the pendency of the criminal case shall not stand in the way for promotion. If any such promotion is given as indicated, that shall be subject to the outcome of the final order to be passed in the pending criminal case. The aforesaid exercise can be undertaken as early as possible in view of the fact that there are vacancies in the post of Assistant Manager at the second respondent bank.

15. With these observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

am

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Registrar of Co-operative Societies,
170, E.V.R.High Road,
Kelpauk,
Chennai.

Order made in
W.P. (MD)No.7506 of 2020

Dated:
10.07.2020

_KM (07.08.2020) 5P 2C