

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.6545 of 2020

K.Vasanthi

... Petitioner

vs.

1. The Registrar of Co-op Societies,  
N.V.N.Maligai,  
Kilpauk, Chennai 600 010.
2. The Joint Registrar of Co-operative Societies,  
Madurai Region,  
13, Kanaga Apartment,  
Lady Dock College Road,  
Madurai - 625 002.
3. The Deputy Registrar of Co-operative Societies,  
Madurai Circle,  
Krishnaraya Theppakulam Street,  
Madurai - 625 001. .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records on the file of the 3<sup>rd</sup> Respondent, dated 04.03.2020 in Na.Ka.No.5824/2018 and quash the same.

For Petitioner : Mrs.Thenmozhi Shivaperumal

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

ORDER

Challenging the proceedings dated 04.03.2020 passed by the 3<sup>rd</sup> Respondent herein vide Na.Ka.No.5824/2018, Petitioner has come up with the present Writ Petition.

2. According to the Petitioner, she was appointed as Senior Inspector of Co-operative Societies on 22.04.1994 and promoted as Co-operative Sub-Registrar on 18.08.2003. She is presently working in the post of Co-operative Sub-Registrar (PDS) under the control of the Deputy Registrar (PDS), Triplicane. While she was working as Field Officer, Madurai West under the control of the Deputy Registrar of Co-operative Societies, Madurai from 14.01.2015 to 23.03.2017, a Show Cause Notice was issued to her under Section 17(A) of the Tamil Nadu

Civil Services (Discipline and Appeal) Rules (in short 'Rules'), for not inspecting Kulamangalam Primary Agriculture Co-operative Society on 20.08.2018, due to which, the following incidents occurred:

(a) Crop loan has been given based on the forged land documents;

(b) No amount has been paid to the Bank and their CMT loan

(c) Jewel loan credit amount has not been brought into account;

(d) No auction proceedings have been initiated for the jewel loan defaulters.

3. It is the case of the Petitioner that, without furnishing her a copy of the Enquiry Report and without giving her an opportunity of hearing, Show Cause Notice has been issued to her. Though she submitted an explanation on 23.01.2019, without accepting the same, punishment of stoppage of increment without cumulative effect was imposed. Challenging the said punishment, the Petitioner filed an Appeal before the Joint Registrar of Co-operative Societies under Section 19 of the Rules. The said Appeal was allowed by the Joint Registrar of Co-operative Societies, by setting aside the order of the Deputy Registrar and the matter was remanded to the Deputy Registrar directing him to conduct a fresh enquiry. However, without considering the same, the Deputy Registrar of Co-operative Societies again confirmed the punishment of stoppage of increment without cumulative effect vide order dated 04.03.2020 in proceedings No.5824/2018. Aggrieved by the same, the Petitioner has come up with the present Writ Petition.

4. Learned counsel for the Petitioner contended that, the Respondents failed to note that, the Petitioner has already conducted two detailed inspections and four surprise inspections every month and that, she also inspected non-credit Co-operative Society and ten Fair Price shops every month in the Public Distribution System. Apart from doing all these works, the Petitioner is burdened with additional work and it is practically impossible to inspect all the Societies within a particular span of time. She further contended that, when the Petitioner is working as a Field Officer, there is no direct contact between her and Kulamangalam Primary Agricultural Co-operative Society.

5. On the other hand, learned Special Government Pleader appearing for the Respondents submitted that, the 3<sup>rd</sup> Respondent had rightly passed the order dated 04.03.2020, confirming the punishment of stoppage of increment without any cumulative effect with liberty to the Petitioner to file an Appeal before the 2<sup>nd</sup> Respondent, if she is aggrieved over the

said order. Without exhausting the appeal remedy, the Petitioner has directly approached this Court and hence, on this ground, the Writ Petition is liable to be dismissed.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. It is seen that the Petitioner was initially appointed as Senior Inspector of Co-operative Societies and subsequently, she was promoted as Co-operative Sub-Registrar in the year 2003 and her next avenue of promotion is Deputy Registrar of Co-operative Societies. Though the name of the Petitioner was to be considered for promotion on the crucial date, viz. 01.10.2018, pursuant to the pendency of the Show Cause Notice, her promotion was deferred and subsequently, she was imposed with a punishment of stoppage of increment without cumulative effect. The reason for such imposition of punishment was that, she had failed to inspect Kulamangalam Primary Agriculture Co-operative Society for the period between 14.01.2015 and 23.03.2017, which resulted in defalcation of amount, extension of crop loan to ineligible persons based on fake documents, etc., by the employees therein.

8. A perusal of the Government Order vide G.O.No.(2D) 109, dated 13.12.2001, as referred to in the Show Cause Notice, discloses the fact that, a Field Officer must conduct two detailed inspections, 4 surprise inspections of all types of Primary Co-operative Societies in the Block per month, in addition to conducting one quarterly inspection of non-credit Co-operative Society every month and 10 Fair Price Shops per month in the Public Distribution System.

9. It is stated by the Petitioner that, since she was given additional in-charge of some other Societies apart from her regular work, she could not inspect the regular Societies, which she used to inspect, due to workload and moreover, she did not receive any complaint from any individual in respect of irregularities. In the Show Cause Notice, except mentioning that, crop loan has been given based on forged documents, no other particulars have been furnished, so as to enable the Petitioner to submit an effective explanation.

10. Learned Special Government Pleader appearing for the Respondents strenuously contended that, only a minor punishment is imposed on the Petitioner for dereliction of her duties. The said contention cannot be accepted for the simple reason that, though the punishment is minor in nature, the repercussion flowing therefrom has its own impact, such as affecting the channel of promotion, indirect conversion of minor punishment into a major one, spoiling the name and fame of the petitioner earned throughout her service and the like.

Moreover, this Court smells rat in the action of the Respondents and feels that, there is some malafide intention on their part in initiation of action and imposition of punishment on the crucial date. Admittedly, the crucial date for consideration of promotion is fixed as 1st of October every year and before the said date, the 1st Respondent hurriedly issued the Show Cause Notice to the Petitioner. The act of the 1st Respondent could have been justified, had the proceedings initiated under Section 17-A of the Rules been concluded at the earliest and punishment been inflicted in the same year without affecting her promotion. Due to failure on the part of the 1st Respondent in not completing the enquiry in time, the Petitioner cannot be made to suffer.

11. At this juncture, learned counsel for the Petitioner submitted that, though this Court has power to modify the punishment, the imposition of punishment itself is unsustainable, in view of the fact that, the Petitioner did not cause any revenue loss to the Government and time-barred amounts have been recovered by way of surcharge proceedings dated 09.02.2019 under Section 82 of the Tamil Nadu Co-operative Societies Act, only on the timely action taken by the Petitioner. Hence, he prayed that, this Court has to interfere with the punishment, with a direction to the Respondents to grant promotion to the Petitioner with effect from 01.10.2018.

12. I find much force in the contention of the learned counsel for the Petitioner, inasmuch as there was no complaint of misappropriation or defalcation against the Petitioner, except the fact that, she did not conduct any inspection during the relevant period in question and could not discharge her duties on account of overburden. It is also an admitted fact that, the Petitioner was additionally given the charge of Kulamangalam Primary Agriculture Co-operative Society. This Court finds justification in the submission made by the learned counsel for the Petitioner that, despite repayment of all loans by the respective Secretary, the Petitioner has been made a scapegoat for the irregularities, with which she was not at all connected.

13. Insofar as deprivation of promotion to the Petitioner is concerned, this Court is of the view that, punishment has been inflicted on the Petitioner, without taking into consideration the pros and cons of the circumstances. As on the crucial date for promotion, namely, 1st October 2018, the Petitioner did not suffer any punishment and proceedings were initiated against her only under Rule 17-A and therefore, deprivation of promotion to the Petitioner is totally contrary to Schedule-XI (Clause 11 and 15) annexed to the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. For better appreciation, said Clauses are extracted hereunder:

"11. Any punishment (other than 'Censure') imposed on a member of service within a period of five years prior to the crucial date and a punishment of 'Censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and his name shall not be considered for inclusion in the approved list. Any punishment, including 'Censure' imposed on a member of service after the crucial date, but before actual promotion or appointment shall be held against the member of service and he shall not be given promotion or appointment.

15. No member of service shall be promoted or appointed to a post, if the member is undergoing any punishment imposed under rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, either on the crucial date or on the date of consideration for actual promotion."

14. In the light of the above provisions, if the case of the Petitioner is considered, this Court has no other option, but to hold that, there was no impediment for the Respondents to consider the promotion of the Petitioner in the year 2018 itself, as she did not suffer any punishment on the crucial date and there are also vacancies to fit in the Petitioner, as confirmed by the learned Special Government Pleader appearing for the Respondents.

15. Taking into consideration the totality of the circumstances, in the considered opinion of this Court, the punishment imposed on the Petitioner has no legs to stand. Hence, the impugned order dated 04.03.2020 is quashed, with a direction to the Respondents to grant promotion to the Petitioner as on the crucial date, viz. 01.10.2018, by drawing a panel, in view of Proforma-II produced by the learned Special Government Pleader, to state that the Petitioner was found fit for inclusion in the panel, as she did not suffer any punishment on the crucial date.

16. It is needless to mention that the Petitioner should be placed above her juniors in seniority. As it is stated that, there are vacancies, promotion to the Petitioner has to be considered and offered before the next panel is prepared. Without considering the case of the Petitioner, no further promotion shall be made, as promoting the Petitioner after preparation of panel for this year or later, may create further litigation.

The Writ Petition is allowed with the above directions.  
No costs. Consequently, connected W.M.P.No.7770 of 2020 is closed.

s/d-  
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

(aeb)

To:

1. The Registrar of Co-op Societies,  
N.V.N.Maligai,  
Kilpauk, Chennai 600 010.
  2. The Joint Registrar of Co-operative Societies,  
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13, Kanaga Apartment,  
Lady Dock College Road,  
Madurai - 625 002.
  3. The Deputy Registrar of Co-operative Societies,  
Madurai Circle,  
Krishnaraya Theppakulam Street,  
Madurai - 625 001.
- + 1 cc to Mrs. Thenmozhi Shivaperumal, Advocate Sr.18376  
+ 1 cc to the Special Government Pleader Sr.18584

W.P.No.6545 of 2020

CP (CO)

EU 12.5.2021

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