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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.18029 OF 2021

AND

W.M.P.NOS.19261 TO 19263 OF 2021

(THROUGH VIDEO CONFERENCING)

R.Geethanjali

... Petitioner

Vs

1. The State of Tamil Nadu
Represented by its Additional Chief Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Fort St. George, Chennai - 600 009.
2. The Registrar of Co-operative Societies,
No.170, N.V.Natarajan Maligai,
EVR Salai, Poonamallee High Road,
Kilpauk, Chennai - 10.
3. The Joint Registrar of Co-operative Societies,
(Finance and Banking)
No.170, N.V.Natarajan Maligai,
EVR Salai, Poonamallee High Road,
Kilpauk, Chennai - 10.
4. The Joint Registrar of Co-operative Societies,
Namakkal Region,
Namakkal.
5. The Joint Registrar of Co-operative Societies,
Salem Region, Salem.
6. The Regional Deputy Director,
Audit for Milk Co-operatives,
Salem.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records in pursuant to the impugned order issued by the second respondent in proceedings Rc.No.41578/2020EM1(1) dated 30.07.2021 and quash the same and consequently direct the respondents to restore the promotion of the petitioner to the post of Co-operative Sub-Registrar as per the order of the third respondent issued in Proceeding Na.Ka.63573/2020/EM1 dated 26.12.2020 and in accordance with the consequential order of posting issued by the fourth respondent in proceedings Na.Ka.3937/2020/PaTho dated 12.01.2021 with all consequential service and monetary benefits.

For Petitioner : Mr.Prem Narayan
for Mr.A.Saravanan

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner was serving as a Senior Inspector of Co-operative societies with the sixth respondent and thereafter promoted as Co-operative Sub-Registrar on 12.01.2021 within the jurisdiction of the fourth respondent.

2. It is the case of the petitioner that she was on medical leave between 01.02.2021 and 13.07.2021 and had obtained Medical Certificate from the Medical Board. The Medical Board by a certification dated 14.07.2021 certified that the petitioner was fit to join duty. The case of the petitioner is that the petitioner was suffering from Cancer and therefore underwent Chemotherapy between 01.02.2021 and 13.07.2021 and therefore could not report to duty.

3. The learned counsel for the petitioner submits that no departmental proceedings were pending against the petitioner prior to her being promoted as Co-operative Sub-Registrar. There was also no proposals for initiating any disciplinary proceedings against the petitioner and therefore the respondents promoted the petitioner as a Co-operative Sub-Registrar on 12.01.2021. After promoting the petitioner as a Co-operative Sub Registrar at Namakkal, the respondents have now issued the impugned order dated 30.07.2021 to the petitioner wherein, it has stated that a charge memo dated 07.07.2021 bearing reference No.2643/2021/Zonal Deputy Director was issued to the petitioner on the ground that the petitioner was relieved and permitted to report duty. However, the petitioner did not join as a Co-



operative Sub-Registrar till the date of framing up of the charges. The impugned orders states that under Section 7(1) under Schedule XI of para II (8) of the Tamilnadu Government Servants (Condition of Service) Act, 2016 states that '' pending of charges framed under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) rules against a member of service shall be a bar for inclusion of his name in the approved list.

4. It is further stated that even though the respondents were issued posting order vide proceedings in RC.No.3937/2020 dated 12.01.2021 by the Joint Registrar of Co-operative Societies, Namakkal Region, they did not appoint as Co-operative Sub Registrars till the date of promotion up to the charges against the petitioner were cleared. Under these circumstances, the second respondent has deleted the name of the petitioner as a person promoted as Co-operative Sub Registrar with the following observations:-

"4. Therefore it has been decided to deleted the names of Tmt.R.Geethanjali and N.Birundaa, Senior Inspectors (S.No.216 and 254 in the Estt list as on 01.01.2019) in the panel of Senior Inspector of Cooperative Societies fit for promotion as Co-operative Sub-Registrars as on 01.05.2020 which was approved vide proceedings first cited and allotment orders issued vide proceedings second cited since disciplinary action under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) rules were initiated against them and hereby orders accordingly. Their name will be considered later after the disposal of disciplinary cases against them. Subject to the outcome of the same, based on the report of Join Registrar, Salem."

5. Appearing on behalf of the respondents, learned Government Advocate for the respondents submits that after the petitioner was promoted on 12.01.2021, the petitioner went on leave and reported to duty only on 14.07.2021 with a Medical Fitness Certificate. It is submitted that therefore, the respondent were justified in cancelling the promotion of the petitioner.

6. Heard learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the impugned order.

7. The crucial date for promoting the petitioner was 01.05.2020. On the aforesaid date, no departmental proceedings were pending against the petitioner and the petitioner's name was also included for being promoted as Senior Inspector of Co-



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operative Society in the panel dated 26.12.2020. She was thereafter issued with a promotion order dated 12.01.2021. Dealing with an identical situation, the Hon'ble Division Bench of this court referred to the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. In Paragraphs 3 and 4, the Hon'ble Division Bench of this Court answered as follows:-

"3.The only issue which falls for consideration in this appeal is whether the appellant's name can be passed over and not included in the panel for promotion to the post of Handloom officer on the ground that a charge memo was issued much after the crucial date. In this regard, it is relevant to note Section 7(1) of the Tamil Nadu Government Servants (Conditions of Service Act), 2016 which reads as follows:

"Mere filing of cases in Courts by the appropriate investigation 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".

4.In terms of the above provisions, what would be relevant is whether charge proceedings is pending as on the crucial date. According to the appellant, on the crucial date i.e., 01.03.2014, there was no charge proceedings pending and charge memo was issued only on 12.01.2015. In the light of Section 7 of the conditions of [Service Act](#), the competent authority who draws the panel for promotion has to consider the case of the candidate based on the said provisions namely, [Section 7\(1\)](#). Therefore, we are not agreeable with the findings rendered by the learned Single Bench in paragraph No.5, by laying down the broad proposition that pendency of charge even after the crucial date would be a bar. In fact, we find that there are no adequate reasons to support such a conclusion apart from the statutory provisions having not been taken note of. Therefore, we are of the view that the decision rendered in the writ petition cannot be taken to be laying down a general legal principal."

8. The ratio of the Hon'ble Division Bench of this Court in the above judgment squarely applies to the facts and circumstances of the case.



9. Therefore, this writ petition deserves to be allowed to the respondents to issue appropriate notice in accordance with law under the provisions of the Tamil Nadu Civil Service (Discipline Appeal Rules), 1995 in case the petitioner is liberty in her capacity as Co-operative Sub-Registrar.

10. This Writ Petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar(CS)

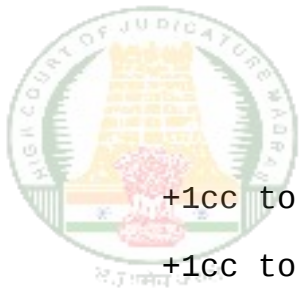
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Sub Assistant Registrar

arb/nst

To

1. The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Fort St. George, Chennai - 600 009.
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Salem Region, Salem.
6. The Regional Deputy Director,
Audit for Milk Co-operatives,
Salem.



+1cc to Mr.A.Saravanan, Advocate, S.R.No.46068

+1cc to the Government Pleader, High Court, Madras, S.R.No.46187

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SJ(CO)
RLP(24/09/2021)