



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.23939 of 2016

and

W.M.P. (MD) .No.4372 of 2021

WEB COPY

T.Priyatharsini

.. Petitioner

Vs

1.The Secretary to Government,
Co-operation, Food and Consumer Protection,
Department,
Secretariat,
Chennai-600 009.

2.The Registrar of Co-operative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

3.The Joint Registrar of Co-operative Societies,
Collector's Complex,
Dindigul.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent, ie., the Registrar of Co-operative Societies, Chennai in R.C.No.31820/2016/EM-1(2) dated 21.10.2016 and quash the same in respect of Sl.No.61 alone of the impugned intimation and consequently direct the first respondent, ie., the Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai, to include the petitioner's name in the approved list of Co-operative Sub Registrar of the year 2016.

[Prayer amended as per the order of this Court in W.M.P(MD). No.4373 of 2021 dated 15.03.2021].

For Petitioner : Mr.S.Visvalingam

For Respondent No.1 : Mr.M.Muthugeethayan
Special Government Pleader

For Respondent Nos.2 & 3 : Mr.P.Mahendran
Additional Government Pleader

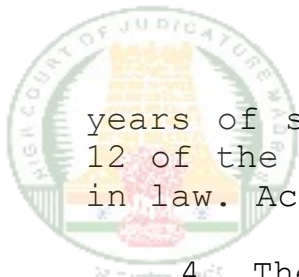


O R D E R

The writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent, ie., the Registrar of Co-operative Societies, Chennai in R.C.No.31820/2016/EM-1(2) dated 21.10.2016 and quash the same in respect of Sl.No.61 alone of the impugned intimation and consequently direct the first respondent, ie., the Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai, to include the petitioner's name in the approved list of Co-operative Sub Registrar of the year 2016.

2. The case of the petitioner is that the petitioner presently serving as Senior Inspector of Co-operative Societies in the office of the Deputy Registrar of Co-operative Societies, Dindigul Circle, Dindigul. Though the petitioner is fully qualified for inclusion in the approved list of Co-operative Sub Registrar of the year 2016, her name has not been included in the list on the ground that she has not completed three years of service in the cadre of Senior Inspector. However, the petitioner has completed only 2 years 8 months and 11 days service in the cadre of Senior Inspector as on the crucial date, ie., on 1.5.2016 and she will be completing 3 years service in the cadre of Senior Inspector on 20.9.2016. For inclusion of her name in the said list, the petitioner made a representation on 14.07.2016 to the Registrar of Co-operative Societies, Chennai and the same was rejected. Aggrieved by the same, the petitioner filed the present writ petition for the above said relief and subsequently, the petitioner filed amendment petition for amending the prayer in this writ petition and the said amendment was ordered and accordingly, the prayer was amended.

3. The learned counsel for the petitioner would submit that though the Sub Rule 7(1)(ii) of the Special Rules for the Tamil Nadu Cooperative Subordinate Services prohibiting for promotion unless the petitioner rendered three years qualified service in the feeder category, however, the said Rule is contrary to Section 12 of Tamil Nadu Government Servant (Conditions of Service) Act, 2016 (hereinafter referred to as the Act), which clearly says that the period spent on leave will not bar any individual from being promoted if he/she is otherwise fully qualified to hold the post. Admittedly, the petitioner joined Senior Inspector of Co-operative Societies on 27.12.2012 and she had been in maternity leave and because of that availing of maternity leave, the petitioner could not complete three years as required under the Special Rules. However, the said legal position has been completely changed by introduction of the Act, which has retrospective effect. If the Earned Leave and Medical Leave availed by the petitioner is included as the period in service, she could have completed three



years of service as on 1.5.2016. But, without considering Section 12 of the Act, the said impugned order was passed which is non-est in law. Accordingly, he prays for allowing the writ petition.

4. The learned Special Government Pleader appearing for the first respondent did not dispute the legal position as submitted by the learned counsel appearing for the petitioner.

5. Considering the facts and circumstances of the case, it is an undisputed fact that the petitioner joined as Senior Inspector of Co-operative Societies on 27.12.2012. While she was in service, a panel was prepared in the cadre of Senior Inspector for the promotion to the post of Cooperative Sub Registrar of the year 2016 and the crucial date was fixed on 1.5.2016. The petitioner's name was not included in the said panel on the ground that the petitioner was not completed three years qualified service in the cadre of Senior Inspector as per Rule 7(1)(ii) of the Special Rules for the Tamil Nadu Cooperative Subordinate Services. On perusal of the Rules makes it clear that in the particular cadre, they must possess minimum period of three years of service including the period of probation, but excluding the period of training and the period spent on leave and suspension. The panel was prepared on 1.5.2016, however, the Act was enacted on 14.9.2016, ie., prior to the amendment of the Act. Similar provisions are available in Rule (9) of the Tamilnadu State Subordinate Rules and the said Act and Rules makes it clear that the absence of a member from duty in such service, whether on leave, or on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of such service is suspended or not, shall not, if he/she is otherwise fit, render him ineligible in his/her turn for promotion to their lower to higher category. In view of Section 12 of the Act and Rule (9) of the above said Rule, the maternity period of 180 days and the Earned Leave of 7 days shall be included for totalling the period of service in the feeder category in order to fulfil the service in the feeder category for promotion to the post of Co-operative Sub Registrar. However, the second respondent, without considering the said Rules and Act provisions, rejected the petitioner's request for inclusion of her name in the approved list of Co-operative Sub Registrar of the year 2016 drawn on 1.5.2016 is not sustainable in law. Hence, the impugned order is set aside. Further, the matter is remanded to the authorities concerned for fresh consideration in the light of Rule (9) of the Tamilnadu State Subordinate Rules and Section 12 of the Act and pass appropriate orders. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.



6. With the above observations and directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PJL

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

1.The Secretary to Government,
Co-operation, Food and Consumer Protection,
Department,
Secretariat, Chennai-600 009.

2.The Registrar of Co-operative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

3.The Joint Registrar of Co-operative Societies,
Collector's Complex,
Dindigul.

+1 CC to M/s.SPL GP (SR-8232[F] dated 02/03/2021)

+1 CC to M/s.SPL GP (SR-11552[F] dated 16/03/2021)

W.P. (MD) .No.23939 of 2016

15.03.2021

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