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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.03.2022
Pronounced on	11.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.5061 of 2015

K.Ramalingam

...Petitioner

Vs.

1. The Registrar of Co-operative Societies,
'NVN Maaligai'
No.170, EVR Periyar Salai,
Kilpauk, Chennai - 600010.

2. The Joint Registrar of Co-operative Societies,
Vellore Region at Vellore.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent made in Proceedings Rc.No.85658/2014/EM3 (2) dated 10.12.2014, to quash the same and consequently, direct the first respondent to treat the period between 24.07.2012 and 16.04.2013 as compulsory wait as per Fundamental Rules and to extend all benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.T.Chezhiyan, AGP

O R D E R

The petitioner herein was promoted as Senior Inspector from the post of Junior Inspector of Co-operative Societies on 23.08.1995. The next avenue of promotion is to the post of Co-operative Sub Registrar.

2. In view of the pendency of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter referred to as "the Rules"] dated 10.05.2005, the name of the petitioner was omitted to be included in the panel



for the post of Sub Registrar for the year 2007-2008, wherein, the crucial date was 01.05.2007. Subsequently, the charges came to be dropped on 05.06.2007. The petitioner herein, had challenged the non-inclusion before this Court in W.P.No.3006 of 2009 and by an interim direction dated 18.04.2009, the petitioner's name was directed to be included in the panel issued on 07.10.2008, on consideration that the charges were already dropped against him. Pursuant to the interim direction, the petitioner was promoted to the post of Co-operative Sub Registrar on 27.01.2010, subject to the result of the main Writ Petition.

3. Subsequently, the action of dropping the charges were suo motu reviewed by the Registrar of Co-operative Societies under Section 36 (1) of the Rules and a punishment of stoppage of increment for a period of one year, without cumulative effect, was imposed on 03.12.2008. When the Writ Petition in W.P.No.3006 of 2009 was taken up for final disposal, it was informed that the prayer had become infructuous, since his name was already included in the panel and accordingly, the Writ Petition was closed on 10.03.2010.

4. In the appeal preferred by the petitioner against the punishment, the Government had passed an order in G.O.(D) No.11, Co-operation Food and Consumer Protection (CH2) Department, dated 06.01.2011, dismissing the appeal and confirming the penalty already imposed. In consequence of this order, the Registrar of Co-operative Societies had cancelled the petitioner's promotion on 11.08.2011 and demoted him back to the post of Senior Inspector. This order was challenged in W.P.No.19857 of 2011 and by an order dated 12.06.2012, this Court had directed the respondent to include the petitioner's name in the panel released on 04.08.2011, with reference to the crucial date 01.05.2010 and grant him promotion in the panel to the post of Co-operative Sub Registrar, within a period of four weeks. In compliance of the order of this Court, the petitioner was again promoted to the post of Co-operative Sub Registrar on 17.04.2013.

5. It is the case of the petitioner that since he was reverted from the post of Co-operative Sub Registrar and was awaiting the orders in the Writ Petition challenging his reversion, he had applied for leave between 18.08.2011 to 23.07.2012 and on the basis of his leave application, this period was regularised as eligible leave. Since he was subsequently promoted on 17.04.2013, he gave a representation requesting to treat the period of service between 24.07.2012 to 16.04.2013, as 'compulsory wait'. However, through the impugned order dated 10.12.2014, the first respondent herein, had stated that as per the proceedings dated 11.08.2011, he was given



posting as Senior Inspector, which he had not joined and owing to his fault, the period between 24.07.2012 to 16.04.2013, was treated as non-duty period, on the principle of 'No Work No Pay'. Challenging the said order, the present Writ Petition has been filed.

6. The learned counsel for the petitioner submitted that though the first respondent herein, had issued demotion orders on 11.08.2011, reverting the petitioner back to the post of Senior Inspector and allotted to Vellore Region, no posting orders were given to him and hence was unable to report for work. It is also his submission that under Ruling (3) of the Fundamental Rule 9, the period claimed by him is deemed to be considered as 'Compulsory Wait' and treated as duty period, for all purposes.

7. The learned Additional Government Pleader, however, places reliance on the averments made in the counter-affidavit and submitted that when the petitioner was reverted to the post of Senior Inspector on 11.08.2011, he ought to have joined the said post, which he had failed and owing to the failure on the part of the petitioner, he was not entitled for considering the period between 24.07.2012 to 16.04.2013 as 'compulsory wait'.

8. I have given my careful consideration to the submissions made by the respective counsels.

9. From the inception, the respondents seem to have mishandled the case of the petitioner in considering his name for promotion to the post of Co-operative Sub Registrar. When the original charges were pending, the petitioner's name was omitted in the promotional panel for the year 2007-2008. Though the charges came to be dropped about a month after a crucial date i.e., on 01.05.2007, they had failed to include his name in the panel for more than two years. This prompted the petitioner to file a Writ Petition before this Court in WP.No.3006 of 2009 and this Court had granted an interim direction on 18.04.2009, to include the petitioner's name in the panel that was subsequently issued on 07.10.2008. This interim direction was in consideration of the fact that the charges against the petitioner were already dropped. In this background, the petitioner was also promoted to the post of Co-operative Sub Registrar, subject to the result of the main Writ Petition.

10. In view of the promotion granted, the Writ Petition in WP.No.3006 of 2009 was closed since apparently the prayer for inclusion of the petitioner's name in the promotional panel, had become infructuous. Thereafter, the second respondent had invoked the powers under Section 36 (1) of the Rules, for reviewing the dropping of charges and accordingly, imposed the



punishment of stoppage of increment for one year, without cumulative effect on 03.12.2008. In view of this punishment, the petitioner was deemed to be not fit for promotion as Co-operative Sub Registrar in the panels as on 01.05.2007 and 01.05.2008. This position led the first respondent to pass an order on 11.08.2011 whereby, the inclusion of the petitioner's name in the panel dated 01.05.2008 was withdrawn and his name was deleted from that approved list. Consequently, his promotion as Co-operative Sub Registrar was cancelled and he was reverted as a Senior Inspector with immediate effect.

11. Aggrieved against this action of the cancellation of promotion and reversion, the petitioner filed a Writ Petition in W.P.No.19857 of 2011 and by an order dated 12.06.2012, the respondents were directed to include the petitioner's name in the panel released on 04.08.2011. While holding so, this Court had observed that the charge memo came to be dropped on 05.06.2007 and the dropping of the charges was not given retrospective effect. However, the suo motu review order passed on 03.12.2008 was applied retrospectively to have effect as on 01.05.2008 and therefore, during the period between 05.06.2007 to 03.12.2008, there was no impediment for promotion in the 2008-2009 panel dated 07.10.2008, whereby, crucial date was 01.08.2008. The relevant portion of the order reads as follows:-

.....

"9. But, the respondents have omitted to see one important aspect. The name of the petitioner was not included in the panel for 2007-2008 with reference to the crucial date 01.5.2007, on account of the pendency of the charge memo on that date. But, that charge memo came to be dropped on 05.6.2007. This order dated 05.6.2007 dropping the charges was not given retrospective effect, so as to give promotion to the petitioner with reference to the crucial date 01.5.2007.

10. On the other hand, the suo motu review order passed on 03.12.2008 is applied retrospectively to have effect as on 01.5.2008. During the period from 05.6.2007 to 03.12.2008, there was no impediment for the petitioner. 2008-2009 panel was to have been prepared with reference to the crucial date 01.5.2008. The panel itself was prepared on 07.10.2008, on which date, there was actually no impediment. The impediment came only on 03.12.2008. Therefore, the stand taken by the respondents is not legally sustainable.

11. But, unfortunately for the petitioner, he allowed the writ petition W.P.No.3006 of 2009 to be closed. Therefore, the benefit of promotion granted to



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the petitioner by proceedings dated 08.02.2010 was not allowed to be retained with the closure of the writ petition. Therefore, the case of the petitioner should at least be considered with reference to the panel whose crucial date is 01.5.2010.

12. The learned Government Advocate produced a copy of the panel as on 01.5.2010. It was issued on 04.8.2011. By this time, the punishment imposed by order dated 03.12.2008 was already over. Since the impugned order was passed subsequent to the release of the panel in the year 2010 (01.5.2010), the petitioner was left out even in that panel. This is actually incorrect. Therefore, the petitioner is entitled to a limited relief.

13. In view of the above, the writ petition is disposed of, directing the respondents to include the petitioner in the panel released on 04.8.2011, with reference to the crucial date 01.5.2010 and grant him promotion at least in that panel to the post of Co-operative Sub Registrar. The order shall be passed within a period of four weeks. There shall be no order as to costs."

12. The aforesaid extract is self-explanatory. It is in consequence to the aforesaid order, the petitioner was promoted to the post of Co-operative Sub Registrar on 17.04.2013. In view of such promotion, the earlier order dated 11.08.2011, cancelling the promotion and reverting the petitioner back as a Senior Inspector, had become redundant. In this background, the learned counsel for the petitioner claims that he was made to compulsorily wait for the posting orders. According to him, though the reversion order was passed on 11.08.2011, the respondents had not issued the posting orders and therefore, sought for treating the period as "compulsory wait".

13. A perusal of the reversion order dated 11.08.2011, reveals that while the Registrar of Co-operative Societies had cancelled the promotion and reverted the petitioner to the post of Senior Inspector, he had directed the Joint Registrar of Co-operative Societies, Vellore Region to post him as a "Senior Inspector of Co-operative Societies". Such posting orders is claimed to have not been passed. Simultaneously, the petitioner had also challenged the reversion order before this Court in W.P.No.19857 of 2011, which came to be allowed by directing the respondents to grant him the promotion to the post of Sub Registrar, Co-operative Societies. It is in view of this cumulative inaction in issuing promotional orders and the subsequent orders of this Court to grant promotion, the



petitioner claims the period between 24.07.2012 to 16.04.2013 as "compulsory wait".

14. Fundamental Rule 9 Ruling 3 of the Tamil Nadu Government, prescribes that when a Government servant is made to compulsorily wait for orders of posting, such period of waiting shall be treated as duty period and during such period of compulsory wait, he shall be eligible to draw pay plus special pay, which he would have drawn, had he continued in the post he held immediately before the period of compulsory wait or the pay plus special pay which he will draw on taking charge of the new post, whichever is less.

15. Though the petitioner had raised this specific ground in the affidavit filed in support of the Writ Petition that the posting orders were not given, the respondents have not denied the same in their counter-affidavit. Neither was any posting orders produced to prove otherwise. However, when the petitioner had requested them to treat the period between 24.07.2012 to 16.04.2013, as compulsory wait, the same was rejected through the impugned order dated 10.12.2014, stating that after the orders of reversion was passed, the petitioner had failed to join to the post of Senior Inspector and owing to his fault, this period was directed to be treated as non-duty period on the principle of 'No work No pay'. Such a decision is contrary to the Fundamental Rule 9 Ruling 3. When the petitioner was promoted to the post of Co-operative Sub Registrar but no posting orders were issued, his position had become precarious for he would not have been in a position to join the promotional post in the absence of the posting order nor could he continue in the post of Senior Inspector since he was technically promoted.

16. It is in this unsettled position, the petitioner was made to compulsorily wait for the outcome of the orders of this Court in W.P.No.19857 of 2011. When the Fundamental Rules provide that during such period of compulsory wait, the period of waiting should be treated as duty period, the impugned order rejecting such a request, is illegal. The Fundamental Rule 9 Ruling 3 also provides that the petitioner would be entitled for pay plus special pay for the duty period of compulsory wait in the post he earlier held or to the promoted post, whichever is less. The petitioner would thus be entitled for such salaries applicable to the post of a Senior Inspector, during the period of compulsory wait.

17. In the light of the above observations, the impugned order dated 10.12.2014, is quashed. Consequently, there shall be a direction to the first respondent to treat the period of service of the petitioner between 24.07.2012 to 16.04.2013 as



'compulsory wait' and further treat such period as "duty period for all purposes" and pass appropriate orders accordingly, within a period of four weeks from the date of receipt of a copy of this order.

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18. With the above directions, this Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

DP/sni

To

1. The Registrar of Co-operative Societies,
'NVN Maaligai'
No.170, EVR Periyar Salai,
Kilpauk, Chennai - 600010.
2. The Joint Registrar of Co-operative Societies,
Vellore Region at Vellore.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.24867
+1cc to the Government Pleader, S.R.No.25760

W.P.No.5061 of 2015

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