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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.08.2021
PRONOUNCED ON : 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.42045 of 2016
and W.M.P.No.20510 of 2017

(Through Video Conferencing)

S.Adikesavan

...Petitioner

vs

1. The Secretary to Government,
Co-operative, Food and Consumer,
Protection Department,
Fort St.George,
Chennai 600 009.
2. The Registrar of Co-operative Societies,
E.V.R.Salai, Kilpauk,
Chennai 600 010.
3. The Joint Registrar of Co-operative Societies,
Thiruvannamalai Region,
Thiruvannamalai.
4. The Joint Registrar/Managing Diretor,
Thiruvannamalai District Central Co-operative Bank,
Gandhi Nagar,
Thiruvannamalai 606 601.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records relating to the impugned order of the 4th respondent issued in Na.Ka.No.269/2015/E1 dated 28.01.2016 so far as concerned the rejection of retrospective promotion with effect from 26.06.1999 and given effect to the next promotion from 31.10.2015, the date of joining in the post of sub-staff and to quash the same and consequently direct the respondent to include the post of Sweeper in the category of Sub-Staff by giving retrospective effect to the proceedings of the 2nd respondent in R.C.No.41288/2015/CBSI(1) dated 21.08.2015 from 03.05.1995, the date on which the Special By-Laws framed and to promote the petitioner as Assistant from the year 2002 by following Rule 149



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(1) of the Tamil Nadu Co-operative Societies Act, 1983, with all consequential service and monetary benefits.

For Petitioner	:	M/s.S.T.P.Kuilmozhi
For R1	:	Mr.L.S.M.Hasan Fizal Government Advocate.
For R2 & R3	:	Mr.V.P.R.Elamparithi Government Advocate.
For R4	:	Mr.L.P.Shanmugasundaram

O R D E R

The petitioner was appointed as a sweeper in the year 1997 on compassionate ground. Thereafter, the petitioner's probation was declared on 15.09.2001 by the 4th respondent. As per the By-laws of the 4th respondent the post of the sweeper is not a feeder post for promotion to the post of sub-staff for being promoted.

2. It is the case of the petitioner that the petitioner is holding Master Degree and therefore the petitioner was entitled for promotion in the cadre of sub-staffs with retrospective effect, even though, for the post of a sweeper there is no avenue for promotion under the bylaws of the 4th respondent. It is further case of the petitioner that the petitioner had earlier made a representation which came to be rejected and therefore the petitioner filed W.P.No.21947 of 2003. The said writ petition was dismissed by an order dated 06.08.2003. It is submitted that against the said order, the petitioner filed an appeal in W.A.No.645 of 2005 before the Division Bench of this Court. It is submitted that though the views of the learned Single Judge in W.P.No.21947 of 2003 vide order dated 06.08.2003 was upheld, at the same time, the respondents were directed to consider the case of the petitioner sympathetically in the light of the proposals.

3. Since this was not considered, the petitioner once again approached this Court in W.P.No.21479 of 2012 which came to be disposed by this Court on 25.02.2015, pursuant to which, the petitioner was appointed as a sub-staff in the 4th respondent/Bank on 31.10.2015.

4. The learned counsel for the petitioner further submits that though the petitioner has been appointed as a sub-staff of the 4th respondent on 31.10.2015, the petitioner was not given promotion with retrospective effect from the date of his appointment in the year 1997, when the petitioner was appointed on temporary basis on compassionate ground and thereafter on a regular time scale vide order dated 22.06.1999.



5. The case of the petitioner was considered by the 2nd respondent and it was decided that the petitioner's representation was being considered on humanitarian ground and the 4th respondent/Bank was directed to include the name of the petitioner to the post of a sub-staff. He therefore submits that the petitioner ought to have been given promotion under the regulation and completion of three years services of the fourth respondent.

6. The learned counsel for the petitioner has drawn attention to the Proceedings of the Special Officer in Virudhunagar Central Co-operative Bank Limited in their proceedings dated 27.10.2004 which has given promotion on completion of three years.

7. Defending the impugned order, the learned Government Advocate for the first respondent, learned Government Advocate for the second and third respondents and the learned counsel for the fourth respondent submits that the writ petition is liable to be dismissed as it is without merits. They submit that based on the level of business transactions as on 31.03.2008, the cadre strength was fixed at 291 posts with 149 posts of Assistant and there is no scope for promoting the petitioner retrospectively from 2001.

8. It is further submitted that the petitioner was appointed in the year 1997 on consolidated pay of Rs.75/- per month by the then Branch Manager, Kilpennathur, namely K.Natarajan, who is none other than the petitioner's own paternal uncle without prior permission or approval of the Managing Director of the 4th respondent/bank and that the appointment of the petitioner was itself contrary the bylaws and the recruitment of the petitioner was not inconsonance with Rule 149 of the Tamilnadu Co-operative Society Rules, 1988.

9. It is further submitted that since the appointment of the petitioner in 1997 itself was illegal and the name of the petitioner for being promoted as a sub-staffs with retrospective effect from 2001 cannot be entertained and has been rightly rejected in the impugned order passed by the 4th respondent.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first respondent, learned Government Advocate for the second and third respondents and learned counsel for the fourth respondent.



11. The appointment of the petitioner as a Sweeper was contrary to bylaws of the 4th respondent Bank. It is evident that the petitioner was over qualified to be appointed as a Sweeper.

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12. The then Branch Manager was a close related of the petitioner and appears to have appointed the petitioner as a Sweeper on compassionate ground for want of a vacancy. The petitioner had earlier approached this Court in W.P.No.21947 of 2003. The said writ petition was dismissed. The petitioner remained unsuccessful before the Division Bench of this Court.

13. The petitioner later approached this Court once again in W.P.No.21479 of 2012. The learned Single Judge of this Court disposed the said writ petition by an order dated 25.02.2015 and directed the 2nd respondent to consider the representation of the petitioner.

14. The second respondent-Registrar of Co-operative Societies, conferred a benefit on the petitioner vide proceeding dated 21.08.2015 and

designated the petitioner as a sub staff of the fourth respondent bank on a humanitarian ground.

15. The services in the 4th respondent Co-operative Bank are sanctioned post, budgeted and regulated under the Bylaws of the Co-operative Society. Therefore, there cannot be any retrospective promotion to the petitioner as initial appointment of the petitioner as a sweeper in the 4th respondent bank itself was contrary to the by-laws.

16. The appointment of the Petitioner as a Sweeper was made only on Compassionate grounds. Infact, strict application of the by-laws would not have entitled to the petitioner to continue inservice. The services of the petitioner has been regularized only due to efflux of time. Long service has conferred such a right to the petitioner to continue in-service.

17. The re-designation of the petitioner as a Sub-Staff cannot entitle the petitioner a claim to promotion/seniority and monetary benefit with retrospective effect as the initial appointment of the petitioner was itself irregular. Further, such exercise would strain the budgets of the 4th respondent Bank which was not contemplated.



18. I therefore do not find any merits in the present writ petition. Hence, this writ petition is liable to be dismissed. Accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Secretary to Government,
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Protection Department,
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Chennai 600 009.
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Gandhi Nagar,
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+1cc to M/s.S.T.P.Kuilmozhi, Advocate, S.R.No.1717
+1cc to the Government Pleader, S.R.No.1998

W.P. No.42045 of 2016

SS(CO)
KKV/03/02/2022