



W.P.(MD)No.16265 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.16265 of 2015

N.Premalal

... Petitioner

vs.

1. The Secretary to Government,
Cooperation, Food and Consumer Production
Department,
Fort Saint George,
Chennai – 600 009.
2. The Registrar of Cooperative Societies,
N.V.N.Maaligai,
No.170, E.V.R. High Road,
Kilpauk, Chennai – 600 010.
3. The Joint Registrar of Cooperative Societies,
Tirunelveli Region,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to impugned proceedings of the first respondent vide G.O.(MS)No.170, Cooperation, Food and Consumer Protection (CDI) Department dated 10.10.2013



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and quash the same and consequently direct the first and second respondents to provide notional promotion to the post of Deputy Registrar of Cooperative Societies from the date on which the petitioner's junior has been promoted and pay the consequential monetary benefit.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : M/s.D.Fajana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the first respondent, vide G.O.Ms.No.170, Cooperation, Food and Consumer Protection (CDI) Department dated 10.10.2013 and consequently direct the first and second respondents to provide notional promotion to the post of Deputy Registrar of Cooperative Societies, from the date on which the petitioner's junior has been promoted and pay the consequential monetary benefits.

2. The brief facts of the case are that the writ petitioner was appointed as Senior Inspector in the Cooperative Department on 16.07.1986.



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Subsequently, promoted as Cooperative Sub-Registrar and then Deputy Registrar of Cooperative Societies and posted as Managing Director of Srivilliputhur Cooperative Urban Bank Limited and has put in 29 years of service. While the petitioner was working as Cooperative Sub-Registrar in Tirunelveli Central District Cooperative Urban Bank Limited, a charge memo, dated 17.08.2009 was issued, under Rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, alleging that the petitioner has committed dereliction of duty. The said charge memo had culminated in imposing punishment of 'Censure', vide order, dated 04.08.2010. Thereafter, the petitioner had challenged the said punishment before the third respondent and the same was dismissed on 31.10.2011. In addition to the disciplinary proceedings, a Surcharge Decree, dated 18.05.2007 was passed against the petitioner for the loss of Rs.70,500/-. The petitioner has preferred an appeal in C.M.A(CS)No.68 of 2007, on the file of the learned Principal District Judge (Cooperative Tribunal), Tirunelveli and the same was allowed vide order dated 20.08.2014 by exonerating the petitioner, from the charge of dereliction of duty and for the allegation of causing loss to the society. In the meanwhile, the first respondent has prepared a panel of Cooperative Sub Registrar to be promoted as Deputy Registrar of Cooperative Societies vide G.O.



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(3D) No.9 Cooperative, Food and Consumer Protection Department, dated 07.06.2011 to the year 2010-2011. The petitioner's name was included in the panel of Cooperative Sub-Registrar in Serial No.121 (Seniority No.1160). To the shock and surprise of the petitioner he was not promoted as Deputy Registrar, but his junior namely Mr.M.Kumaresan (Seniority No.1162), was promoted as Deputy Registrar. Aggrieved over the same, the petitioner has preferred an appeal on 20.07.2011 and the same was dismissed by the impugned order, dated 10.10.2013.

3. The petitioner submitted that the appeal filed by the petitioner was rejected on the ground that the petitioner was imposed with the punishment of 'Censure', subsequent to the crucial date, but before the actual promotion and hence the petitioner was not eligible to be promoted as per Government letters. In the impugned order, dated 10.10.2013, it has been mentioned that the amount in pursuance of surcharge decree, dated 18.05.2007 will be recovered from the petitioner and in such circumstances, the petitioner would not be eligible for promotion.



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4. The contention of the petitioner is that, since in the disciplinary proceedings only 'Censure' was imposed as punishment, the respondent ought to have considered the petitioner's name since for the check period cannot be invoked for the punishment of Censure. The learned counsel appearing for the petitioner relied on the Judgment rendered in Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani reported in 2011(3) CTC Page 129. Aggrieved over the non-granting of promotion, the petitioner has preferred this writ petition.

5. The respondent has filed counter affidavit stating that the name of the petitioner was not recommended for promotion because he has awarded punishment of 'Censure' on 04.08.2010. The petitioner has preferred an appeal on 20.07.2011 before the first respondent and the same was rejected by issuing G.O. MS. No.170, Co-operation Food and Consumer Protection Department, dated 10.10.2013, stating that as per consolidated instructions issued by the Government vide Letter No.18824/S/2005-2, Personnel and Administrative Reforms(s) Department, dated 07.10.2005, wherein, it has been stated 'any punishment other than 'Censure' imposed on an officer within a period of five



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years prior to the crucial date or 'Censure' imposed after the crucial date but before the actual promotion should be held against the delinquent. In such circumstances, the petitioner's name cannot be considered. Therefore, the petitioner's appeal was rejected on the ground that he was imposed with punishment of 'Censure', subsequent to the crucial date i.e., 01.10.2009 and before the actual promotion. Further, the surcharge order, dated 18.05.2007 was inflicted against the petitioner on the crucial date and the petitioner had preferred appeal in CMA (CS) No.68/2007, CMA (CS) No.6/2008 and CMA (CS) No. 19/2008.

6. The respondent further stated in the counter affidavit that the surcharge decree was ordered by the Deputy Registrar of Cooperative Societies, Tirunelveli, dated 18.05.2007. The surcharge proceeding was pending on the crucial date i.e., 01.10.2010. The surcharge order was set aside in C.M.A.(CS)No.68 of 2007 only on 20.08.2014. Therefore, the petitioner is not entitled to promotion and the promotion was rightly denied by the respondents and the respondents prayed to dismiss the Writ Petition.



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7. Heard Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the petitioner and M/s.D.Fajana Ghoushia, learned Special Government Pleader and perused the material documents available on record.

8. It is an admitted fact that the 'Censure' punishment was imposed on 04.08.2010. The panel was prepared for the year 2010-2011, vide G.O. Ms. No. 170, Cooperation, Food and Consumer Protection (CDI) Department dated 10.10.2013. The crucial date for promotion is 01.10.2010.

9. The contention of the respondents is that Censure punishment was imposed on 04.08.2010, as on the crucial date i.e. 01.10.2010 and hence the promotion for year 2010-2011 there was currency of punishment and the check period. Therefore, the petitioner is not entitled to promotion. But the petitioner submitted that check period cannot be taken into account especially for Censure and hence claimed the petitioner is entitled to be considered for promotion. After hearing the rival submissions this Court is of the considered opinion that for the



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punishment of Censure, the respondents cannot impose check period. The respondents rely on the Government Letters wherein it imposes check period, but the said government letters were already quashed by the Hon'ble Full Bench in Rani's case as stated referred supra and has also held that check period is alien to service jurisprudence. Hence, the respondents are estopped from stating that there is a check period.

10. In a similar issue, this Court has already considered vide its order, dated 30.11.2011 in W.P.(MD)No.12948 of 2014. The relevant paragraph Nos.9, 10 & 11 are extracted hereunder:

9. In Rani's case this Court, vide order, dated 27.04.2011 has held that "check period" prescribed under government letters are not having statutory force and has set aside the government letters. The amendment to the Rule came into force from 24.02.2014. Since the currency of punishment is prior to the amendment and the check period prescribed under government letters are quashed this Court is of the view that the petitioner is entitled to promotion after the currency of punishment is over.

10. The punishment order for Charge Memo 1, is on 30.06.2004 and charge memo 2 is on 21.05.2005. Since the order based on remand (charge memo 1) and the order



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modifying the punishment (charge memo 2) was passed on 30.06.2009 and 01.04.2010 respectively, then the petitioner is entitled to promotion prior to the said orders. As on the crucial date of 01.08.2007, there is no currency of punishment and the check period cannot be calculated as per judgment passed in Rani's case, then the petitioner is entitled to promotion as on crucial date of 01.08.2007 and for the panel 2008-2009.

11. Therefore, this Court is of the view that the petitioner is entitled to be included notionally on the crucial date of 01.08.2007. Therefore, the respondents are directed to grant notional promotion for the year 2008-2009 and consequent pensionary benefits shall be granted. The said exercise shall be carried on within a period of 4 weeks.

Therefore this Court is of the considered opinion that the respondents cannot deny promotion to the petitioner by citing check period and the petitioner is entitled to be considered for promotion for the year 2010-2011.

11. The next contention raised by the respondents is that in the Surcharge proceedings the petitioner was imposed with the punishment to pay the loss of Rs. 70,500/- and hence the petitioner is not entitled to promotion. The learned Counsel appearing for the petitioner submitted that in counter filed by the



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respondents it has been stated that the surcharge proceedings is not an impediment or embargo for the promotion. Moreover, the petitioner was granted promotion on 05.06.2013, if the contention of the respondents is to be accepted then the respondents would not have granted promotion in the year 2013. It is also pertinent to be note that the petitioner has preferred an appeal against surcharge proceedings in C.M.A(CS)No.68 of 2007, on the file of the learned Principal District Judge (Cooperative Tribunal), Tirunelveli and the same was allowed vide order dated 20.08.2014 by exonerating the petitioner. Therefore, this Court is of the considered opinion that surcharge proceedings is not impediment for granting promotion and the petitioner is eligible to be considered for promotion for the year 2010-2011.

12. It is submitted by the petitioner that the petitioner has already retired from service on attaining the age of superannuation. Therefore, this Court is of the considered opinion that the petitioner is entitled to notional promotion for the year 2010-2011 and consequent pensionary benefits. The respondents are directed to grant notional promotion to the petitioner and consequential pensionary



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benefits with a period of six weeks from the date of receipt of the copy of the order. With these directions, this Writ Petition is allowed. No Costs.

Index : Yes / No
Internet : Yes
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