



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.10682 of 2012

K.Ravichandran

... Petitioner

Vs.

1. The Secretary to Government,
Food, Co-operation & Consumer,
Protection Department,
Fort St. George,
Chennai – 9.

2. The Registrar of Co-operative Societies,
Kilpauk, Chennai – 600 010.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the second respondent in Proceedings R.C.No.85174/2011/EM.1 dated 13.12.2011 and quash the same and consequently direct the respondent to include the name of the petitioner in the panel of the year 1997 and accordingly promote the petitioner to the post of Co-operative Sub-Registrar retrospectively on par with his immediate junior and in accordance with his seniority with all monetary and other consequential service benefits.



WEB COPY

W.P.No.10682



For Petitioner : Mr.R.Prem Narayanan

For Respondents : Mr.K.Surendran,
Additional Government Pleader

ORDER

This Writ Petition has been filed questioning the order passed by the second respondent in Proceedings R.C.No.85174/2011/EM1 dated 13.12.2011 and sought for a consequential direction to direct the respondents to include the name of the petitioner in the panel year 1997 and to promote him to the post of Co-operative Sub-Registrar on par with his immediate junior.

2. This case has chequered history. However, it is not necessary to refer to the previous history and it would be suffice to start with the order passed by this Court in W.P.No.13835 of 2011. The said Writ Petition in W.P.No.13835 of 2011 was filed by the petitioner herein challenging the Proceedings in Rc.102740/2004 EM.1 dated 02.02.2011, wherein the request of the petitioner for promotion from the panel year 1997 was rejected by the respondents. The said Writ Petition was disposed of by a learned Single Judge of this Court by an order dated 01.08.2011, after having taken note of the fact that the petitioner



was denied promotion for the panel year 1997 on the ground that a criminal case was pending against him at that point of time and also having taking note of the fact that the petitioner was acquitted in the said criminal case, directed the respondents to find out as to whether there was any impediment other than the criminal case for non-inclusion of the petitioner's name in the panel year 1997 and to pass orders afresh.

3. The relevant portion of the said order reads as under:

“ 11. There were no impediment for including the petitioner in the panel of 1997, except the pendency of a criminal case in FIR 348 of 1997 on the file of Brammadesam Police Station, as per the impugned order. The criminal case ended in acquittal on 17.01.2002. The petitioner has to be considered for inclusion in the panel of the year 1997 on acquittal and he should be given notional promotion from the date on which his immediate junior was promoted if there is no other impediment.

12. In view of the decision rendered by the Full Bench of this Court in 2011 (4) MLJ 1 supra, the impugned order is set aside. In these circumstances, since it is stated that pendency of a criminal case alone was the reason for non-inclusion of the petitioner in the panel of the year 1997, the second respondent is directed to find



WEB COPY

W.P.No.10682



out as to whether there was any impediment other than the criminal case, for non-inclusion of the petitioner in the panel of the year 1997 and also to take into account the decision of the Full Bench of this Court reported in 2011 (4) MLJ 1 supra, for inclusion of the petitioner's name in other years and the second respondent is directed to pass orders afresh in the light of the observations made above, within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.”

Pursuant to the above order, the second respondent considered the case of the petitioner for promotion for the panel year 1997 and the same was rejected by issuing the impugned Proceedings in Rc.85174/2011/EM1 dated 13.12.2011 on the ground that the disciplinary proceedings initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules framed by the Regional Deputy Director of Audit for Milk Co-operatives, Chennai in Proceedings Rc.2442/1997/A1 dated 08.09.1997 was pending, which ultimately ended by inflicting of punishment of stoppage of increment for a period of six months without cumulative effect through proceedings dated 30.04.2009. Thus, it is stated that due to pendency of the charges framed against



the petitioner through the charge-memo dated 08.09.1997 at the time of consideration of the panel as on 01.05.1997, the petitioner was declared as ineligible for inclusion in the panel as on 01.05.1997 and thus, the request of the petitioner for inclusion of his name for the panel year 1997 and for consequential promotion on par with his junior was rejected through impugned proceedings. The relevant portion from the impugned order reads as under:

“ 3. In this connection, it is informed that the case of the petitioner was thoroughly examined and it is found that though the criminal case filed in FIR 348 of 1997 ended in acquittal on 17.01.2002, he has not been exonerated from the charges framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules framed by the Regional Deputy Director of Audit for Milk Cooperatives, Chennai in Rc.2442/1997/A dated 08.09.1997 which has ended with infliction of punishment of stoppage of increment of 6 months without cumulative effect (vide proceedings Rc.16227/2002/EM4 dated 30.04.2009 of the Joint Registrar, Tiruvannamalai Region) for the proven lapses. In view of the above said pendency of charges dated 08.09.1997 at the time of consideration of the panel as on 01.05.1997, he is not eligible for inclusion in the panel as on 01.05.1997 and hence his request was rejected. Accordingly, the orders of the Hon'ble High Court first cited



WEB COPY

W.P.No.10682



has been complied with. In the circumstances, the question of the contempt of Court does not arise. If it is decided by you to agitate against the orders third cited of the Registrar of Co-operative Societies, Writ Petition alone could be filed.”

From the above extracted portion of the impugned order, it is evident that the charge-memo, which is the basis for rejecting the claim of the petitioner is itself dated 08.09.1997 and the relevant date for consideration of the eligibility of the petitioner for the panel year 1997 was 01.05.1997. Therefore, the question of the charges framed under the charge-memo dated 08.09.1997, being pending as on 01.05.1997 does not arise. From the very date of the charge-memo itself, it is evident that the same is much after the crucial date i.e., 01.05.1997. As the petitioner was already acquitted from the criminal charges, as early as on 17.01.2002 and by virtue of the order passed by this Court in W.P.No.13835 of 2011, the said criminal proceedings cannot be a ground to reject the claim of the petitioner for inclusion of his name for the panel year 1997 for promotion to the post of Co-operative Sub-Registrar.

4. As already noted above, the charges which are put against the



petitioner framed through charge-memo dated 08.09.1997 can never be a basis for not considering the case of the petitioner for inclusion for the panel year 1997, as the crucial date for inclusion was 01.05.1997, which is much prior to the date of the said charge-memo dated 08.09.1997.

5. In the light of the above, the ground on which the claim of the petitioner was negatived by the respondents by issuing the impugned proceedings is totally unsustainable.

6. The learned counsel for the petitioner also placed reliance on the decision rendered by a learned Single Judge of this Court in W.P (MD) No.19281 of 2019 dated 28.11.2019, wherein it was held as under:

“ 10. From the records, it is seen that as on 15.03.2019, there was no disciplinary proceeding pending against the petitioner. Later on only, charge-memo was issued to the petitioner by the Commissioner of Disciplinary Proceedings, Madurai, as stated by the second respondent. Even, in the counter affidavit, it has been stated that only on 30.05.2019, the charge-memo was issued. Except the recommendation of the first



WEB COPY

W.P.No.10682



respondent to the Commissioner of Disciplinary Proceedings to initiate action against the petitioner, there was no proceeding pending as on 15.03.2019. As rightly contended by the learned counsel for the petitioner that the disciplinary proceeding starts only when a charge-memo is issued to the delinquent employee. The ratio in the judgment relied on by the learned counsel for the petitioner, is squarely applicable to the facts of the present case. The order of the second respondent rejecting the representation of the petitioner on the ground that the first respondent has recommended the Commissioner of Disciplinary Proceedings to initiate action against the petitioner, is erroneous, invalid and illegal and the same is liable to be set aside. Admittedly, there was no disciplinary proceedings pending against the petitioner as on crucial date i.e., on 15.03.2019. The respondents 1 & 2 are directed to promote the petitioner as Special Grade Municipal Commissioner, if he is otherwise eligible to be promoted and place him above his immediate juniors in the seniority list of the Special Grade Municipal Commissioner.”

In the light of the above decision rendered by this Court and also taking into consideration the order passed by this Court in W.P.No.13835 of 2011 dated 01.08.2011, the action of the respondents in rejecting the claim of the petitioner



for including his name in the panel year 1997 for promotion to the post of Co-operative Sub-Registrar is bound to be declared as illegal and arbitrary and accordingly, the impugned Proceedings in R.C.No.85174/2011/EM.1 dated 13.12.2011 is set aside. Taking into consideration the chequered history and many rounds of litigations leading to filing of repeated Writ Petitions before this Court and the action of the respondents in denying the legitimate promotion to the petitioner, though no proceedings either disciplinary proceedings or criminal proceedings were pending as on 01.05.1997, this Court is inclined to issue further direction to the respondents in this regard.

7. Accordingly, the Writ Petition is allowed, directing the second respondent to include the name of the petitioner for the panel year 1997 for promotion to the post of Co-operative Sub-Registrar and to promote him notionally with effect from the date on which his immediate junior was promoted and extend all other consequential benefits as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Miscellaneous Petitions, if any, shall stand closed.



W.P.No.10682

19.12.2023

skr

Index : Yes

Speaking order

Neutral Citation : Yes

To

1. The Secretary to Government,
Food, Co-operation & Consumer,
Protection Department,
Fort St. George, Chennai – 9.
2. The Registrar of Co-operative Societies,
Kilpauk, Chennai – 600 010.



WEB COPY

W.P.No.10682



MUMMINENI SUDHEER KUMAR, J.

skr

W.P.No.10682 of 2012

19.12.2023