IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.09.2023

Pronounced on : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

W.P.Nos.2535, 3931 & 11572 of 2022
and W.M.P.Nos.2674, 2675, 4080, 4081, 4082, 11055, 11056, 11057 & 11092 of 2022

S.M.Sharmila .. Petitioner in W.P.No.2535 of 2022

R.Panneerselvam .. Petitioner in W.P.No.3931 of 2022

Tamil Nadu Co-operative
Audit Department Officials Association
Rep by its General Secretary
P.Shanmugasundaram
Registered Office at No.277/30
Bharathi Salai, Triplicane, Chennai – 5
.. Petitioner in W.P.No.11572 of 2022

Versus

1.The Additional Chief Secretary to Government
Finance (Co-operative Audit) Department
Fort St.George, Chennai – 600 009

2.The Director of Co-operative Audit
Amma Campus
Integrated Financial Campus
Nandanam, Chennai – 600 035

3. Tamil Nadu Public Service Commission
Represted by its Secretary
TNPSC Road, Park Town
VOC Nagar, Chennai – 600 003

4.CA.L.Steffi
5.CA.L.Suganya .. Respondents in WP.No.2535 of 2022

1.The State of Tamilnadu
Represented by Additional Chief Secretary to Government
Finance (Co-operative Audit) Department
Secretariat, Chennai – 600 009

2.The Director of Co-operative Audit
Amma Campus
Integrated Financial Campus
Nandanam, Chennai – 600 035

3. Tamil Nadu Public Service Commission
Represted by its Secretary
TNPSC Road, Park Town
VOC Nagar, Chennai – 600 003
.. Respondents in WP.Nos.3931 & 11572 of 2022

Prayer in W.P.No.2535 of 2022**:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned notification issued by the 3rd respondent in notification No.02/2022 dated 21.01.2022 and to quash the same and consequently direct the respondents 1 and 2 to review the reservation under direct recruitment to the post of Assistant Director of Co-Operative Audit in Co-Operative Audit Service.

Prayer in W.P.No.3931 of 2022**:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the First Respondent in G.O.Rt.No.675, Finance (Co-Operative Audit) Department dated 16.08.2018 and quash the same to the limited extent of fixation of more than two vacancies in the post of Assistant Director of Co-Operative Audit in Cooperative Audit service to be filled up by direct recruitment and to direct the Respondents herein to notify only ten percent of the permanent vacancies in the post of Assistant director of Co-Operative Audit in Co-Operative Audit service to be filled up by direct recruitment at any point of time and to grant all consequential benefits to the Petitioners.

Prayer in W.P.No.11572 of 2022**:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in connection with the impugned order passed in G.O.(Rt).No.675, Finance (Co-Op Audit) Department dated 16.08.18 and quash the same to the extent of fixation of more than 2 vacancies in the post of Asst Director in the Co- op Audit Department service to be filled by direct recruitment and direct the respondents herein to notify only 10 percent of the requirement vacancies in the post of Asst Director in the Co-Op Audit Department at any point of time as contemplated under G.O.Ms.No.718, Finance (Co-Op Audit) Department dated 16.12.1998 and grant all other consequential service and monetary benefits.

For Petitioners : Mr.K.Venkataramani, Senior Counsel
for Mr.K.Muthappan in W.P.No.11572 of 2022
Mr.S.Sivakumar in W.P.No.2535 of 2022

For Respondents : Mr.J.Ravindran, AAG
assisted by
Mr.U.Bharanidharan for R1 & R2
Additional Government Pleader
Mr.I.Abrar Mohammed Abdullah for R3

For Petitioner : Mr.M.Ravi in W.P.No.3931 of 2022

For Respondents : Mr.J.Ravindran, AAG
assisted by
Mr.U.Bharanidharan for R1 & R2
Additional Government Pleader
Mr.I.Abrar Mohammed Abdullah for R3

COMMON ORDER

W.P.No.2535 of 2022 is filed challenging the notification issued by the Commission in notification No.02/2022 dated 21.01.2022, quash the same and consequently direct the respondents 1 and 2 to review the reservation under direct recruitment to the post of Assistant Director of Co-Operative Audit in Co-Operative Audit Service.

W.P.Nos.3931 & 11572 of 2022 are filed challenging the G.O.(Rt).No.675, Finance (Co-Op Audit) Department dated 16.08.18 on the file of the first respondent, quash the same to the extent of fixation of more than 2 vacancies in the post of Asst Director in the Co-Operative Audit Department service to be filled by direct recruitment and consequently direct the respondents herein to notify only 10 percent of the requirement vacancies in the post of Assistant Director in the Co-Operative Audit Department at any point of time as contemplated under G.O.Ms.No.718, Finance (Co-Op Audit) Department dated 16.12.1998 and grant all other consequential service and monetary benefits.

2. Since, the facts and circumstances of these cases are similar in nature, they are disposed of by way of this Common Order.

3. It is the contention of the writ petitioners that as per the G.O.Ms.No.28, Finance (Co-operative Audit) Department dated 22.01.2019, there are 56 temporary post in the cadre of the Assistant Director of Co-operative Audit in the Co-operative Audit Department as on 22.10.2019 in the total cadre strength of 75 in the cadre of the Assistant Director of Co-operative Audit. As per the adhoc rules framed in G.O.Ms.No.561, Finance (Co-operative Audit) Department dated 26.06.1987 for the posts of Assistant Director, there are two methods; one by way of direct recruitment and another by way of transfer among the persons of Co-operative Audit Officers in the Co-operative Audit Department of Tamil Nadu Co-operative Subordinate Service. Hence, it is the contention of the writ petitioners that the as per the adhoc rules, 10% of the promotion post in the cadre strength of the Assistant Director shall be reserved for appointment by direct recruitment as per G.O.Ms.No.718, Finance (Co-operative Audit) Department dated 16.12.1998.

4. According to the writ petitioners, there are 16 posts of Deputy Director, 8 posts of Joint Director, 18 posts of Assistant Director and one post of Director in the Co-operative Audit Department. Hence, it is the contention that only out of 19 permanent vacancies available, 10% shall be reserved for direct recruitment, as per the adhoc rules, only two vacancies ought to have been notified in the notification, whereas, they have invited application for 8 vacancies. Hence, according to the petitioners, the entire notification is against the adhoc rules. Therefore, seeks to quash the Government Order as well as the impugned notification.

5. As per the Rules 3(c) of the adhoc rules for appointment to the post of Assistant Director of Cooperative Audit, 10% of the permanent posts in the cadre strength of Assistant Director shall be reserved for appointment by direct recruitment. It is the number of permanent post in the category of Assistant Director. It is relevant to note that to decide as to the number of vacancies that may arise in the posts of Assistant Director in each panel year is relevant.

6. It is the contention of the respondents that total strength of the posts of Assistant Director of Co-operative Audit is 75, but 19 posts are permanent for a long time. By G.O.Ms.No.159, Finance (Co-operative Audit) Department dated 01.06.2017, orders were issued for the up-gradation of 20 posts of Co-operative Audit Officer as Assistant Director of Cooperative Audit. The said up-gradation was permanent in nature. As no such period of validity has been specified in the said Government Order, the Government has upgraded those posts permanently. Hence, according to the respondents that as on the crucial date of panel year 2018-2019, the number of permanent posts of Assistant Director was 39 and the remaining 36 posts are in temporary nature and those posts are in existence for more than 5 years. Hence, as per the proviso to Section 9 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, (Tamil Nadu Act 14 of 2016), those temporary posts are in existence for more than 5 years can be treated as permanent post for the purpose of filling up the direct recruitment as permitted by the said Act. Hence, it is the contention that the advertisement has been issued considering the total cadre strength and disputed the entire writ petitions.

7. The Tamil Nadu Public Service Commission also supported the contention of the Government.

8. The learned counsel for the writ petitioners mainly would submit that as per the adhoc rules governing the appointment of the Assistant Director, Cooperative Audit, 10% of the permanent posts in the cadre strength of the Assistant Director alone shall be reserved for appointment by direct recruitment, whereas, as on crucial date only 19 remaining posts are available. Such being the position, the notification ought to have issued only in respect of the two posts, whereas, now, the notification has been issued for 8 posts which in fact affect the other promotees. Hence, the entire notification has to be set aside.

9. The learned Additional Advocate General would submit that though 19 permanent posts were available. Originally, the Government has upgraded 20 other posts without any time limit. Such view of the matter, those upgraded posts were also to be treated as permanent posts. According to him, total permanent posts is around 39, remaining 36 posts were in existence for

more than 5 years and as per Section 9 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the temporary posts which is in existence for more than 5 years, those vacancies should be treated as permanent for filing up the vacancies. Hence, according to him the entire notification is in order and cannot be challenged.

10. I have perused the entire materials placed on record. Now, the point arise in these writ petitions is whether the G.O.(Rt).No.675, Finance (Co- Op Audit) Department dated 16.08.18 and consequent notification issued for the direct recruitment for the post of Assistant Director, Co-operative Audit Department is against the Rules.

11. The main contention of the writ petitioners are that the notification issued by the respondent exceeds the direct recruitment quota. In this regard, it is useful to refer the adhoc rules which was amended in G.O.Ms.No.718, Finance (Co-operative Audit) Department dated 16.12.1998. The amendment were brought as follows:

> *"3.Appointment: (a) Appointment to the posts specified in Column (1) of the table below shall be by the method specified in the corresponding entries in column (2) thereof:-*
>
> *THE TABLE*

Posts ***(1)***	***Method of Appoinment*** ***(2)***
1.Joint Director	Promotion from among the holders of the post of Assistant Director of Co-operative Audit
2.Assistant Director	(i) Direct Recruitment: or (ii) Recruitment by transfer from among the holders of the posts of Co-operative Audit Officer in the Co-operative Audit Department in the Tamil Nadu Co-operative Subordinate Services.

(b) Promotion to the post of Joint Director shall be made on grounds of merit and ability. Seniority being considered only where merit and ability are approximately equal.

(c) Ten percent of the permanent posts in the cadre strength of Assistant Director shall be reserved for appointment by direct recruitment.
(G.O.Ms.No.718, Finance (Co-operative Audit) Department dated 16.12.1998)"

Emphasis supplied

12. In the Sub Rule (c) of Rules 3 of the adhoc rules makes it clear that 10% of the permanent posts in the cadre strength of the Assistant Director shall be reserved for appointment by direct recruitment. Now, it is the grievance of the writ petitioners that only 19 are the remaining posts in the cadre strength of the Assistant Director. Therefore, only two posts at the rate of 10% ought to have called for in the notification.

13. It is the stand of the respondent that 19 seats were originally permanent posts. 20 posts have been upgraded by the Government in G.O.Ms.No.159, Finance (Co-operative Audit) Department dated 01.06.2017. The above Government Order when carefully perused, it would indicate that 20 posts have been upgraded without any time limit.

14. It is relevant to note that whenever the temporary post is created or temporary post is upgraded, such post will be created for the specific period and it requires renewal or extension by the Government, but, whereas, the Government Order referred above is without any specific period. The said 20 temporary posts have been upgraded as Assistant Director of Co-operative Audit without any stipulation. Therefore, this Court is of the view that the contention of the respondents that the up-gradation of 20 posts is also to be treated as permanent posts, is in order. Therefore, when the temporary posts were also upgraded and become the permanent posts in the cadre strength, now, the writ petitioners cannot contend that only the permanent posts originally identified alone to be notified cannot be countenanced.

15. The remaining temporary posts of 36 were in existence for more than 5 years according to the respondent. Such being the position, Section 9 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, makes it very clear that wherever such temporary posts were in existence for more than 5 years, it shall be treated as permanent posts for the purpose of method of recruitment. Section 9 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 has overriding effect of the other specific rules. The non-abstante clause contained in Section 9 makes it very clear that in respect of recruitment, the method contemplated under Section 9 of the Act has to be followed irrespective of the Special Rules or other Rules governing the recruitment to any service in the State or Subordinate service.

16. Such view of the matter when the entire cadre strength has now become permanent posts, inviting applications at the rate of 10% in the cadre strength treating as permanent posts cannot be faulted with. Such view of the matter, the writ petitioners cannot challenge the notification and seek amendment in the Government Order. It is the prerogative of the Government to enhance the cadre strength and also make any number of temporary posts to permanent posts which has been done rightly in these matters.

Accordingly, the writ petitioners cannot question the Government Order as well as the notification.

17. Hence, I do not find any merits in these cases and are dismissed. No costs.

27.09.2023

dhk
Internet : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

To

1.The Additional Chief Secretary to Government
Finance (Co-operative Audit) Department
Fort St.George, Chennai – 600 009

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Amma Campus
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Represted by its Secretary
TNPSC Road, Park Town
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N.SATHISH KUMAR, J.

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