



W.P.No.3083 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.3083 of 2014

and

M.P.No.1 of 2014

R.Ponnuvelu

.... Petitioner

vs

1. The Additional Registrar of Coop. Societies,
Chennai Region, TANFED Building 3rd Floor,
Abiramapuram,
Chennai – 18.

2. The President,
L.I.C. Employees Co-operative Bank Ltd.,
United India Buildings, Post Box No.2036,
Chennai – 600 108

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari filed Mandamus to call for the records relating to the impugned order passed by the 1st respondent in his proceedings Rc.No.4098/2013/C2 dated 17.01.2014 and quash the same and consequently direct the respondents to re-fix the petitioner's salary with effect from 01.11.2007 as Assistant Accountant and 29.11.2008 as



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Accountant/ Manager and with effect from 29.11.2011 as Secretary/ General Manager and disburse the retirement benefits including Provident Fund and Gratuity together with calculating the arrears from 29.11.2008 to till the petitioner's retirement i.e., on 30.06.2013.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.J.C.Durairaj,
Additional Government Pleader for R1
Mr.S.Arumugam for R2

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent dated 17.01.2014, in which, the revision filed by the petitioner seeking to set aside the order dated 26.06.2013 passed by the 2nd respondent, reverting the petitioner from the post of General Manager to the post of Manager, was rejected and consequently, direct the respondents to re-fix the petitioner's salary with effect from 01.11.2007 as Assistant Accountant and 29.11.2008 as Accountant/ Manager and with effect from 29.11.2011 as Secretary/ General Manager and disburse the retirement benefits including Provident Fund and Gratuity together with calculating the arrears from 29.11.2008 to till the petitioner's retirement i.e., on 30.06.2013.



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2. i) The case of the petitioner is that he petitioner was appointed as Assistant in the 2nd respondent bank on 5.11.1978 through employment exchange and subsequently, promoted as Assistant Accountant with effect from 01.01.2004. When the petitioner was working as such, the said promotion was cancelled by the then Special Officer on 21.05.2004 and he was posted as Assistant Account (Incharge) in the existing vacancy from the said date to 31.10.2007, but the then special officer recovered the excess salary paid to the petitioner for the work done in the post of Assistant Accountant for the period from 01.01.2004 to 31.05.2004. For the above said recovery and depromotion, the petitioner approached the Additional Registrar of Coop. Societies and filed revision petition for repayment of the said recovery amount and promotion. The Additional Registrar, allowed the said revision petition on 14.02.2008, by observing that the Special Officer may promote the petitioner after the ban order for promotion is lifted. In the month of September 2007, the said ban order has been lifted by the Registrar of Coop. Societies as well as the Government of Tamil Nadu.

ii) In the meantime, the Registrar of Cooperative Societies issued circular that the ban on promotion has been lifted from 07.09.2007 and the petitioner was promoted to the post of Assistant Accountant Incharge to



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Assistant Accountant with effect from 01.11.2007. Subsequently, the petitioner was promoted as Accountant/Manager from the post of Assistant Accountant/ Assistant Manager from 29.11.2008. When the Secretary/ General Manager post in the 2nd respondent bank fell vacant, since the petitioner was the senior most employee in the 2nd respondent Bank, he was asked to do the work as Secretary Incharge from 01.04.2009. When the promotion was given effect to the higher post to the petitioner upto Secretary Incharge, in every feeder category, the petitioner completed three years period and complied with Rule 149 of Tamil Nadu Coop. Societies Rules, but without verifying the same, the audit objections were made with regard to his promotion by the Coop. audit in the year 2008-2009. On 05.02.2013, the then Special Officer promoted the petitioner from the post of Manager to General Manager and he was working as General Manager from 01.02.2013. But the 2nd respondent issued orders on 26.06.2013, whereby reverting the petitioner back to the post of Manager with effect from 01.02.2013 on the ground that the promotion of the petitioner to the post of General Manager from Manager is not in accordance with G.O.Ms.No.212 dated 24.12.2009. Against the same, the petitioner filed writ petition in W.P.No.17823 of 2013 but at the admission stage itself, the



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petitioner withdrew the same and approached the 1st respondent and filed revision petition under section 153 of Tamil Nadu Coop. Societies Act. But the 1st respondent, without assigning any valid reasons, rejected the revision petition. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent.

4. i) Learned counsel for the petitioner would submit that when the petitioner was working as Assistant Accountant, the said promotion was cancelled by the then Special Officer on 21.05.2004, but the petitioner was posted in the post of Assistant Accountant (Incharge) in the existing vacancy from the said date. But the then Special Officer recovered the excess salary paid to the petitioner for the post of Assistant Accountant for the period from 01.01.2004 to 31.05.2004, even though he was discharging his duties as Assistant Accountant Incharge.

ii) Learned counsel would further submit that against the order of recovery and promotion, the petitioner approached the Additional Registrar of Coop. Societies and filed revision petition for repayment of the said recovery amount and promotion and the Additional Registrar of Coop.



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Societies, allowed the said revision petition on 14.02.2008, by observing that the Special Officer may promote the petitioner after the ban order for promotion is lifted and allowed the then Special Officer to fill up the higher post by way of giving promotion and issued directions that higher post should not be filled up by fresh recruitment.

iii) Learned counsel would further submit that in the meantime, the Registrar of Coop. Societies issued circular that the ban on promotion has been lifted from 07.09.2007. On the basis of such circular, the petitioner was promoted from the post of Assistant Accountant Incharge to Assistant Accountant with effect from 01.11.2007. When the Secretary post in the 2nd respondent bank fell vacant, since the petitioner is the senior most employee in the 2nd respondent bank, the petitioner was asked to do the work as Secretary Incharge w.e.f. 1.4.2009 and subsequently, he was promoted as Accountant/ Manager from the post of Assistant Accountant from 01.11.2010. When promotion was given effect to the higher post to the petitioner upto Secretary incharge, in every feeder category, the petitioner completed three years period and the petitioner complied with Rule 149 of Tamil Nadu Co.op. Societies Rules.

iv) Learned counsel would further submit that the Special Officer



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promoted the petitioner from the post of Manager to General Manager and he was working as General Manager from 01.02.2013. The 2nd respondent having allowed the petitioner to do the work of Secretary Incharge as well as General Manger, but at the verge of his retirement, when the 2nd respondent decide to depromote the petitioner from the post of General Manager to Manager, the 2nd respondent ought to have issued notice to the petitioner and should have given an opportunity to the petitioner for the proposed depromotion.

v) Learned counsel would further submit that even in the impugned order, it is stated that the petitioner was promoted to the post of General Manger vide proceedings of the Special Officer dated 05.02.2013 by virtue of G.O.Ms.No.212 dated 24.12.2009. Hence, it is proved that the petitioner was promoted as General Manger as per terms and conditions of the said G.O.Ms.No.212.

vi) Learned counsel would further submit that the Government of Tamil Nadu issued various G.Os stating that no disciplinary proceedings shall be taken against the employees at the verge of their retirement. Further, the 2nd respondent had calculated the petitioner's gratuity from the date of his permanent service but the petitioner was appointed in the 2nd



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respondent bank through employment exchange on 06.11.1978 and the gratuity should be calculated from the date of the petitioner's appointment i.e., from 06.11.1978.

vii) Learned counsel would further submit that as a matter of fact, the petitioner should have been promoted as Secretary/General Manager after putting three years of satisfactory service i.e., on 28.11.2011 as per Rule 149(1) of the Tamil Nadu Coop. Societies Rules, 1988, but actually, the petitioner was promoted after lapse of four years. Hence, the order passed by the Special Officer were in accordance with the Tamil Nadu coop. Societies Rules, 1988 and G.O.Ms.No.212 and hence, the audit objections raise and subsequent recovery of excess salary from the petitioner on the basis of Audit objection and the order of the President dated 26.06.2013 are unsustainable.

viii) Learned counsel would further submit that the Hon'ble Supreme Court as well as this Court, time and again, held that even if wrong fixation of pay scale was made and the same was paid to the employee, the same cannot be recovered from the employee. Moreover, as per the judgment reported 2007(6) SCC 180 2011(5) MLJ 741 and 2011 (4) MLJ 446, if an employee was promoted and was working in the promoted post and for the



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work done, salary has also been paid to him, subsequent recovery of the amount paid, is illegal and arbitrary. Learned counsel would further submit that the then Special Officer has sought for clarification from the Joint Director of Coop. Audit Department vide letter dated 04.09.2009 with regard to the petitioner's promotion and the same is still in the clarification stage as per letter dated 24.09.2013 of the Assistant Director of Coop. Audit, Chennai (North). Therefore, the contention of the respondent that the promotion was cancelled based on the audit objection is untenable. Without clarifying the position, the 1st respondent has rejected the revision which is illegal. Hence, he would pray to allow the writ petition.

5. Per contra, the learned Additional Government Pleader appearing for the 1st respondent would submit that the promotion given to the petitioner is clearly in violation of the Tamil Nadu Co-operative Societies Rules, 1988 and the bye-laws of the Society. The criteria for promotion from the post of Manager to the post of General Manager has been prescribed in the Tamil Nadu Co-operative Societies Rules, 1988 and the same is applicable to all the registered Co-operative Societies, including the 2nd respondent Society. The pre-amended proviso to sub rule (1) of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1988 prescribe minimum



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period of three years of satisfactory service for eligibility for promotion from one category to the immediate higher category of post. Further, the qualification approved by the Registrar have to be adopted by all the registered societies. The qualification prescribed for the post of General Manager is a degree of B.A., or B.Com., or B.Sc., of any of the recognized Universities. The petitioner is not a degree holder and consequently, he cannot be promoted to the post of General Manager. The petitioner is claiming the service rendered by him as Assistant Accountant (re-designated as Assistant Manager) which was later cancelled due to the ban on promotion by the Registrar of Co-operative Societies and as Accountant (re-designated as Manager) which was later cancelled due to objections from the Audit, as qualifying period of service for promotion to the post of General Manager. The periods which he served as Assistant Accountant and Accountant, which was later cancelled due to ban on promotion or audit objection will not entitle the petitioner to claim that the promotion given to him to the post of General Manager is legally valid. The petitioner has not availed the opportunity to file revision petition under section 153 of the Tamil Nadu Cooperative Societies Act 1983 before the Government against the impugned order passed by the 1st respondent and has approached this



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Hon'ble Court without exhausting the statutory remedy available to him.

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6. Learned counsel for the 2nd respondent would submit that the petitioner was promoted from the post of Assistant to the post of Assistant Accountant with effect from 01.11.2007 and from the post of Assistant Accountant to the post of Accountant with effect from 01.11.2010. The petitioner is entitled to be promoted to the next cadre as Secretary only with effect from 01.11.2013. In the meantime, the post of Assistant Accountant, Accountant and Secretary were re-designated as Assistant Manager, Manager and General Manager. The Government in G.O.(Ms).No.212 Cooperation, Food and Consumer Protection (cJ1) department dated 24.12.2009 brought amendment to Rule 149(2) to the effect that no person shall be eligible for appointment to the post of Manager, Superintendent and above by promotion, unless he has completed atleast one year of satisfactory service in the category of post, in which, he is working and not less than six years of satisfactory service in the category of post, in which, he is working and the feeder category of post to which he is working combined together. In the instant case, the petitioner who was promoted as Assistant Manager on 01.11.2007 and Manager on 01.11.2010, did not have the service as prescribed in G.O.(Ms)No.212 dated 24.12.2009 amending rule 149(2) of



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the Tamil Nadu Cooperative Societies Rules. However, the Special Officer of the respondent bank, by giving scant respect to the amended rules, vide proceedings dated 05.02.2013, promoted the petitioner from the post of Manager to the post of General Manager with effect from 01.02.2013. The petitioner has also abused his official position as Manager and Principal Officer of the bank and got the promotion to the post of General Manager knowing fully well that he is not entitled to be promoted as General Manager and consequently, the promotion given to the petitioner is illegal, void and *ab initio* and non est in the eye of law. Therefore, the respondent Bank sought to nullify the illegalities perpetuated in giving promotion to the petitioner as General Manager, contrary to the aforesaid G.O.(Ms)No.212. Hence, the writ petition is liable to be dismissed

7. This Court considered the submissions made on either side and perused the materials available on record.

8. The petitioner was working as Secretary Incharge with additional charge and was working as General Manager from 01.02.2013 and this fact was known to the 2nd respondent and he allowed the petitioner to do the work as Secretary Incharge as well as General Manager. The petitioner was promoted to the post of General Manager vide proceedings of the Special



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Officer dated 05.02.2013 by virtue of G.O.Ms.No.212 dated 24.12.2009.

Further, the 2nd respondent had calculated the petitioner's gratuity from the date of his permanent service but the petitioner was appointed in the 2nd respondent bank through employment exchange on 06.11.1978 and the gratuity should have been calculated from the date of petitioner's appointment i.e., from 06.11.1978.

9. The main allegation as against the petitioner is that he is not having minimum educational qualification for General Manager and that he did not attain the 6 years eligibility for promotion i.e., the petitioner is having only 5 years and 3 months in the feeder category of post to which he was working, combined together. The petitioner was appointed as Assistant on 06.11.1978 and approximately after a lapse of 29 years, he was promoted as Assistant Accountant w.e.f. 01.11.2007 and subsequently, the petitioner was promoted as Accountant with effect from 29.11.2008. The above said promotion orders were made in accordance with G.O.Ms.No.212 and Rule 149(1) of Tamil Nadu Coop. Societies Rules, 1988. The petitioner was promoted as Secretary/ General Manager w.e.f. 01.02.2013 as per proceedings of the Special Officer in R.C.No.Nil dated 05.02.2013. Further, the then Special Officer has sought for clarification from the Joint



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Director of Coop. Audit Department vide letter dated 04.09.2009 with regard to the petitioner's promotion and the same is still in the clarification stage as per letter dated 24.09.2013 of the Assistant Director of Coop. Audit, Chennai (North). Therefore, the cancellation of promotion, based on the audit objection is untenable.

10. If at all the 2nd respondent decided to depromote the petitioner from the post of General Manager to Manager, the 2nd respondent ought to have issued notice to the petitioner and should have given an opportunity of hearing to him. When the petitioner was to retire on 30.06.2013, the reversion order, reverting back the petitioner from the post of General Manager to the post of Manager was passed on 26.06.2013 i.e., only four days prior to the date of retirement. The 2nd Bank respondent, having fixed the scale of pay for the post of General Manager and paid the same, cannot reduce and recover the same, without giving an opportunity to the petitioner to be heard.

11. The petitioner has discharged higher responsibilities and it is not a case where he committed any fraud or misrepresentation. When there is no misrepresentation or fraud on the part of the petitioner, without providing reasonable opportunity, de-promoting him at the verge of his



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retirement is against law. Therefore, this Court is of the view, to meet the ends of justice, the writ petition has to be allowed as prayed for.

12. Accordingly, the Writ Petition is allowed. The impugned order dated 17.01.2014 passed by the 1st respondent is set aside and consequently, the order passed by the 2nd respondent dated 26.06.2013 is also set aside. The respondents are directed to re-fix the petitioner's salary as prayed for, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

30.03.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Additional Registrar of Coop. Societies,
Chennai Region, TANFED Building 3rd Floor,
Abiramapuram,
Chennai – 18.



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J.NISHA BANU,J.

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