



W.P.(MD).No.3869 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.3869 of 2017
and
W.M.P(MD)No. 3048 of 2017

P.Prakash

... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.

2.The Joint Registrar of Co-operative Societies,
Karur Region, Karur.

3.The President,
M.M.289, Thondamanginam Primary
Agricultural Co-operative Credit Society,
Thondamanginam,
Karur District.

4.M.Ilangiyam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 03.10.2015 passed by the 3rd respondent and the consequential impugned order passed by the 2nd



W.P.(MD).No.3869 of 2017

Respondent vide Na.Ka.No. 5343/2015/Sa.Pa dated 06.10.2016 and quash the same and consequently direct the 3rd respondent to promote the petitioner to the post of Junior Clerk/Fertilizer Salesman from date on which the 4th respondent was promoted with all attendant benefits.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For R1 & R2 : Mr.A.Baskaran
Additional Government Pleader

For R3 : No Appearance

For R4 : Mr.C.Prithviraj

ORDER

The present writ petition has been filed challenging the impugned order, dated 03.10.2015 and the consequential order, dated 06.10.2016 with the consequential direction to the 3rd respondent to promote the petitioner to the post of Junior Clerk / Fertilizer Salesman from the date on which the 4th respondent was promoted with all attendant benefits.

2. The brief facts of the case are that the petitioner was recruited by the District Recruitment Bureau under Section 74 of Tamil Nadu Cooperative



W.P.(MD).No.3869 of 2017

Societies Act and was appointed as Salesman on 10.07.1998. The petitioner's date of birth is 12.05.1971 while the date of birth of the 4th respondent is 15.01.1972. The 4th respondent was also appointed on 10.07.1998 as a Salesman in the 3rd respondent society. The contention of the petitioner is that the 4th respondent was suspended from service vide order, dated 23.09.2010 for having committed certain irregularities. Subsequently, a charge memo was issued against the 4th respondent and she was punished with stoppage of increment for 2 years. The currency of punishment expired on 30.06.2013. As per Bye-Laws, the 4th respondent is not entitled to be considered for promotion till 30.06.2016, on which the check period of 3 years would be completed. The post of Junior Clerk cum fertilizer Salesman became vacant and the petitioner submitted a representation, dated 05.06.2014 seeking to promote him to the said post. The 3rd respondent issued impugned order, granting promotion to the 4th respondent though she was not eligible to be considered for promotion as per bye-law. Aggrieved over the same, the petitioner has filed a revision petition before the 2nd respondent under Section 153 of the Tamil Nadu Cooperative Societies Act. A specific contention that was raised by the petitioner was that the 4th respondent was already imposed with the punishment and she is not eligible to be considered for promotion. The said objection was



W.P.(MD).No.3869 of 2017

declined and the 2nd respondent has passed mechanical order, dismissing the revision petition. Aggrieved over the same, the present writ petition has been filed.

3. The contention of the petitioner is even though the petitioner and the 4th respondent were appointed on the same date i.e., 10.07.1998, the 4th respondent cannot be considered for promotion. Since she was facing punishment and based on check period till 30.06.2016, she cannot be considered. The Hon'ble Full Bench in *Deputy Inspector General of Police Vs V. Rani* reported in *2011 (3) CTC 129* has held that check period cannot be invoked, since it is alien to the service jurisprudence. The claim of the petitioner that the 4th respondent cannot be considered based on check period is declined.

4. The next contention that was raised by the petitioner is that the District Recruitment Bureau has submitted a selection list following the roaster principle. However, the respondents have not re-drawn the seniority list based on merits. In the impugned order, the 2nd respondent has specifically stated that



W.P.(MD).No.3869 of 2017

a seniority list was prepared keeping the petitioner in Serial No.16 and the said seniority list was prepared based on the merits. However, the learned counsel for the petitioner submitted that such seniority list was never prepared at all. Hence, the respondents were granted several opportunities to produce the list of seniority which was prepared on marks. However, the respondents could not produce the same by stating one reason or the other. The respondents are simply relying on the seniority list prepared by the District Recruitment Bureau. The Recruitment Bureau always would prepare the list of selected candidates based on the Reservation only. Thereafter another list would be prepared granting seniority which would be based on marks. If the seniority list is prepared based on Reservation, then the list is totally against the dictum laid down by the Hon'ble Supreme Court in the case of ***Bimlesh Tanwar Vs. State of Haryana & Others in Appeal (Civil) No.879 of 2000*** judgment dated 10.03.2003 reported in ***(2003) 5 SCC 604***.

5. Therefore, this Court is inclined to quash the impugned order and remit the case back to the 2nd respondent to redo the seniority list. However before signing this order, the Hon'ble Supreme Court has again considered the



W.P.(MD).No.3869 of 2017

issue rendered in ***Bimlesh Tanwar Vs. State of Haryana & Others*** in ***P. Madhu vs K. Nanthakumar on 18.04.2023 in contempt petition (Civil) Diary No (s) No. 6415 of 2021 in SLP (C) No. 2886 of 2016*** and has held that any recruitment after 10.03.2003, the respondents should strictly follow the seniority list based on marks / merits only. However, prior to 10.03.2003, the Hon'ble Supreme Court has held it is not inclined to disturb the seniority list (either followed marks or reservation). In the present case, the petitioner and the 4th respondent were recruited on 10.07.1998. Hence, following the dictum laid down in ***P. Madhu vs K. Nanthakumar on 18.04.2023 in contempt petition (Civil) Diary No (s) No. 6415 of 2021 in SLP (C) No. 2886 of 2016***, this Court is of the considered opinion that the respondents ought to follow the dictum laid down in ***P. Madhu vs K. Nanthakumar on 18.04.2023 in contempt petition (Civil) Diary No (s) No. 6415 of 2021 in SLP (C) No. 2886 of 2016***.

6. With the above said observations, this Writ Petition stands dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

01.02.2023

NCC : Yes / No



W.P.(MD).No.3869 of 2017

Index : Yes / No
Internet : Yes/ No

gbg

To

- 1.The Registrar of Co-operative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk, Chennai-600 010.
- 2.The Joint Registrar of Co-operative Societies,
Karur Region, Karur.



WEB COPY



W.P.(MD).No.3869 of 2017

S.SRIMATHY, J.

gbg

W.P.(MD).No.3869 of 2017



WEB COPY



W.P.(MD).No.3869 of 2017

01.02.2023