



W.P(MD) No.6769 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No. 6769 of 2016

N.Virumandi

: Petitioner

..Vs..

1.The Managing Director / Joint Registrar,
District Central Co-operative Bank,
Dindigul District.

2.The Regional Joint Registrar,
Dindigul Region, Dindigul.

3.The Chairman,
Dindigul District Central Co-operative
Bank,
Dindigul.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue an order or direction more particularly in the nature of WRIT OF CERTIORARIFIED MANDAMUS, to call for the records of the 1st respondent vide his proceedings in Na.Ka.No.99/2015-2016/Pa.1, dated 06.10.2015 and to quash the same and further, to direct the 1st respondent to issue the benefits to the post of the Assistant Manager to the petitioner from the year 2009.



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For Petitioner : Mr.D.Senthil
For R1 & R3 : Mr.D.Shanmugaraja Sethupathi
For R2 : Mr.P.Thambidurai
Government Advocate

ORDER

The present Writ Petition is filed for writ of Certiorarified Mandamus, to quash impugned proceedings dated 06.10.2015 passed by the 1st respondent and to direct the 1st respondent to issue the benefits to the post of the Assistant Manager to the petitioner from the year 2009.

2. The brief facts of the case are that the petitioner was originally appointed in the respondent Bank in the year 1998 as Assistant and was promoted as Assistant Manager on 10.10.2014 and subsequently, on superannuation retired from service on 30.11.2015. The contention of the petitioner is that the promotion as Assistant Manager was due as early as in the year 2009 itself and the petitioner was in serial number 62 in the Seniority list prepared in Na Ka.No.87/2009 -10/P1 as on 25.07.2009. The petitioner's promotion was not considered due to the pendency of charges on the false complaint given by one Mr.S.Jayabalan who borrowed amount



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from the petitioner. When the petitioner was doing business before joining bank employment, the said Jayabalan gave the false complaint with the intention to give pressure for the compromise or to withdraw the suit in O.S.No.79 of 2004 on the file of Additional District Court/ Fast Track Court, Madurai. The said suit was decreed subsequently. The charges pending on the basis of the false complaint of Jayabalan were dropped on 11.01.2011. Even though the charges were dropped, the respondent bank did not consider the petitioner's promotion. Infact all the juniors as per the senior list were promoted and the petitioner alone was left out. The petitioner submitted a representation to the respondents stating that the complaint was closed on 11.01.2011 itself and therefore, requested the respondents to grant promotion. Instead of promoting the petitioner, the respondents herein issued a charge memo on 22.12.2012 by stating that there were irregularities in Kambaliyampatti Primary Agricultural Cooperative Society, which was not in the petitioner's control during the period of irregularities. Hence, the petitioner submitted a detailed explanation and filed a writ petition in W.P.(MD)No.9621 of 2012 to dispose the petitioner's representation and the same was withdrawn on



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13.07.2012.

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3. The respondents conducted enquiry and passed an order on 25.04.2013 and imposed a punishment of censure. Against the order of censure, the petitioner filed a revision before 2nd respondent under Section 153 of Cooperative Societies Act and on 31.01.2014 the same was withdrawn by the petitioner. Thereafter, on 10.10.2014, the petitioner was promoted as Assistant Manager, Nilakkottai Branch and after that on 24.01.2015, the petitioner filed an appeal before the 3rd respondent on the ground that the petitioner is entitled for the promotion as early as from 2009 itself. Pending appeal the petitioner attained superannuation and retired from the service on 30.11.2015. On 06.10.2015 the 1st respondent rejected the appeal stating that enquiry was pending against the petitioner during that period and punishment of censure was awarded for that reason the promotion was not granted. Moreover, the respondents stated that the same was not questioned in a relevant period of time and there is no direct request from the petitioner to the Management and on that ground the



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petitioner's appeal was rejected. Aggrieved over the same, the present writ petition is filed.

4. The 1st respondent had filed counter affidavit stating that the writ petition is not maintainable against the Society based on the judgment in the case of Marappan Vs. Deputy Registrar of Cooperative Societies, reported in 2006(4) CTC 689, 2007(5) CTC 1. The petitioner is having alternative remedy to file Revision under section 153 of the Act, the Registrar has the power to call for records and examine the records. The Tamil Nadu Cooperative Societies Act, being a self-contained Code, has provided with exhaustive mechanism to deal with the issues relating to the service condition. When the petitioner was working as Assistant in Dindigul Central Cooperative Bank Limited, one Mr. George Virumandi had submitted a complaint dated 14.12.2006, alleging that the petitioner has obtained employment in the Bank by registering his name in Dindigul District Employment Office by giving false residential address. Moreover, the petitioner has suppressed the fact that he was already declared to be insolvent by a competent Civil Court. On the basis of the said complaint,



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the Management of the Bank has initiated disciplinary proceedings by issuing Charge Memo dated 30.06.2007. In the enquiry report, dated 24.11.2009, the first charge of giving false residential address has not been proved. As far as the charge relating to the declaration of insolvent is concerned, the charge was proved. Hence, the petitioner was issued second show cause notice dated 21.12.2009. In response to the second show cause notice, the petitioner had submitted his explanation dated 04.09.2010 and 08.12.2010. The above disciplinary proceeding was ended by issuing "warning" to the petitioner, vide order, dated 11.01.2011. Thereafter, the petitioner was debuted to work as Circle Supervisor in Natham Circle. During the relevant period the Kampiliyampatti Primary Agricultural Cooperative Credit Society is falling under Natham Circle, which is under the control of petitioner. The Secretary and other employees of the above Society has committed various irregularities, misappropriated the funds for a sum of Rs. 4,57,355/- and there was deficit stock of 17 jewels bags. The Secretary and other employees, after receiving jewel loan amount from the borrower, had not remitted the amount with the Society and thereby misappropriated a sum of Rs.4,41,700/-. Further, they have also



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misappropriated a sum of Rs. 15,655/- while selling fertilizer to the members. The petitioner being Circle Supervisor is bound to inspect the Society and verify the jewel loan accounts and he has to submit quarterly report once in every three months. But the petitioner has miserably failed to do the same. The inaction and willful dereliction on the part of the petitioner leads to misappropriation and financial loss to the society. Hence, under Section 81 enquiry was initiated wherein in the enquiry report, dated 16.06.2011, the petitioner was held responsible for willful negligence and dereliction of duty. As per the recommendation of the Enquiry Officer and on the basis of the direction issued by the Deputy Registrar, dated 28.12.2011, the disciplinary authority has issued Charge Memo dated 22.02.2012 against the petitioner. On the basis of the Enquiry Report dated 09.01.2013, the petitioner was issued second show cause notice dated 31.01.2013. The petitioner has submitted his explanation dated 14.02.2013. Thereafter, the respondents passed the order of punishment of censure dated 25.04.2013.

5. The counter affidavit further states that in addition to the above disciplinary proceedings, a criminal case in Crime No.22 of 2012



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was registered against the petitioner for offences under Sections 420, 465, 468, 471 & 109 of the Indian Penal Code by the Inspector of Police, District Crime Branch, Dindigul. Since disciplinary proceedings and criminal case were pending against the petitioner, he was not coming under the zone of consideration for promotion. Under Rule 149 of the Tamilnadu Cooperative Societies Rules prescribes three years of service and should possess satisfactory service for eligibility for promotion from one category to the immediate next higher category. The promotion is not automatic and not an absolute right but on fulfilment of aforesaid two conditions. Moreover, it will be on the basis of merit, ability and also on the basis of seniority. Since the petitioner is not having the required three years of satisfactory service, the petitioner cannot claim promotion as a matter of right. The petitioner was facing disciplinary proceedings as well as criminal proceedings. The disciplinary proceedings ended up in punishment as well. Hence, on completion of disciplinary proceedings and criminal proceedings, the petitioner was considered for promotion and was granted promotion on 10.10.2014. While he was working as Assistant Manager, he attained the age of superannuation on 30.11.2015 and he was



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relieved from service on the date of superannuation. Subsequently, the petitioner was allowed to retire from service by order dated 27.01.2016 and all terminal benefits were paid thereafter. After retirement, there is no employer employee relationship to maintain this writ petition. Hence, the 1st respondent prayed to dismiss the writ petition.

6. Heard Mr.D.Senthil, learned Counsel appearing for the petitioner, Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for respondents 1 and 3 and Mr.P.Thambidurai, learned Government Advocate appearing for 2nd respondent and perused the records.

7. The contention of the petitioner is that he was in the seniority list dated 25.07.2009 in Serial No.62, but he was not promoted, since the respondents initiated disciplinary proceedings based on the complaint by one Jayabalan. It is an admitted fact that prior to joining the respondent society's service the petitioner was doing financial business and has lent money to the said Jayabalan. Since the said Jeyabalan has not repaid the amount, the petitioner has initiated a suit in O.S.No.79 of 2004. As a counter claim and in order to bring the petitioner for compromise, the



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said Jayabalan had preferred a complaint before the respondents. Based on the complaint of Jayabalan the respondents have initiated disciplinary proceedings. After considering the explanation of the petitioner, the respondents have concluded the disciplinary proceedings with warning. Having concluded with warning on 11.01.2011, then the petitioner ought to have been considered for promotion.

8. But the respondents did not considered since again the respondents initiated another disciplinary proceedings for negligence and deliration of duty, since the petitioner had not deducted the misappropriation of fund committed by the Secretary and other employees of Kambaliyampatti Primary Agricultural Cooperative Society. The contention of the petitioner is that he was only a supervisory authority to the said society. Moreover, the misappropriation was not during his period. It is seen that the petitioner was charged for negligence and dereliction of duty and not for misappropriation. Infact after considering the petitioner's explanation the respondents have imposed only the punishment of censure. Since it is the punishment of censure, it is evident that there is no



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misappropriation committed by the petitioner and it is only negligence and deliberation of duty.

9. The contention of the respondents is even if the censure punishment is imposed on the petitioner, the petitioner is not entitled to be considered for next one year based on the concept of “check period” and therefore, after the check period was over, the petitioner was considered in the year 2014 and he was granted promotion. This contention of the respondents cannot be accepted since the Hon’ble Full Bench of this Court had considered the issue in ***Deputy Inspector General of Police, Thanjavur Range vs V. Rani***, reported in ***2011 (3) CTC 129*** and has held that check period cannot be put against the employees since the concept of check period is alien to service jurisprudence. Moreover, the check period was imposed through Government letters which have been declared as unconstitutional because it is only circular and there is no amendment to the rules. In the present case the period of delinquency is prior to the amendment. Therefore, the Rani's case is fully covering the present case. Following the Rani’s case the Hon’ble Division Bench of this Court in ***G.Rajalakshmi vs Principal Secretary to Government, School Education***



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Department in **W.A.(MD)No.983 of 2015** and judgment rendered in **M.Jagadeesan vs N.A.Senthilnathan** reported in **[2018] 8 MLJ 1/[2018] 0 Supreme(Mad)3440** has held check period cannot be put against the delinquent employees. Therefore, this Court is of the considered opinion the check period cannot put against the petitioner. Hence, both warning and censure cannot be impediment for granting promotion to the petitioner. Hence the respondents have erred in declining promotion.

10. In the meanwhile the petitioner was also facing criminal proceedings for the same misappropriation charges. Infact after the criminal proceedings was over, the respondents have considered the petitioner for promotion. It is seen that the petitioner was unnecessarily implicated in the criminal proceedings, hence the petitioner is entitled to be considered when the criminal case had ended in favour of the petitioner. More so, when the petitioner was implicated in the criminal case.

11. The respondents contended that any employee should have completed 3 years of service in one category and should have



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completed satisfactory service. Since the petitioner was facing two disciplinary proceedings and a criminal case at the time of consideration, the petitioner had not satisfied the conditions for granting promotion. The said plea of the respondents cannot be accepted, since the warning and censure cannot be considered as punishment. Moreover, for the punishment of warning, the delinquency against the petitioner is private dispute between the petitioner and one Jayabalan and it has nothing to do with the service. As far as the censure punishment the allegation is not misappropriation but negligence to deducted the misappropriation. Since the punishment is only censure the same cannot be cited for declining promotion and the petitioner is eligible to consider for promotion.

12. The next contention of the respondent is the present petitions filed belatedly. The petitioner has attained superannuation on 30.11.2015 itself but the writ petition is filed on 04.04.2016, hence the contention of the respondents is that the writ petition is belatedly and has relied on the order dated 29.11.2021 passed by this court in K.Sethuraman Vs. Joint Registrar and another in W.P.(MD)No.6071 of 2014. On perusal



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of the said order, it is seen that the petitioner therein was imposed with the punishment the year 2004 and retired in the year 2006 and thereafter, he has submitted a representation in the year 2012. Moreover, the punishment thereunder was stoppage of increment for two years without cumulative effect. In the present case the facts are entirely different and hence the said order cannot be relied on. Moreover, the petitioner is continuously fighting for his right to promotion and he has submitted an appeal on 24.01.2015. Pending that appeal, the petitioner has attained superannuation and retired from service on 30.11.2015. Therefore, this Court is of the considered opinion that there is no delay in agitating the issue of promotion. Hence, the petitioner is entitled to promotion.

13. The respondents are directed to grant promotion to the petitioner in the year 2009 itself by fixing the date where the petitioner's immediate junior was granted promotion and grant all service benefits. Since it is not pensionable service the petitioner is entitled to monetary benefits, but the petitioner is not entitled to any interest.



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14. With the above said observation and directions, the writ
petition is allowed. No costs.

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Index:Yes/No
Internet:Yes/No
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To

The Regional Joint Registrar,
Dindigul Region, Dindigul.



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S. SRIMATHY, J.,

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