IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

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THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.23288 of 2011 and
M.P.Nos.1 and 2 of 2011 and 1 of 2012

K.Suthandira Mohan ... Petitioner

Vs

1.The Director of Cooperative Audit,
Tamilnadu Slum Clearance Board Buildings,
Kamarajar Salai,
Chennai 5.

2.The Assistant Director of Cooperative Audit,
No.13, Chairman Chidambaram Street,
Villupuram,
Villupuram District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.No.318/2011 A.Pa.A.1, dated 22.08.2011 and quash the same and consequently directing the second respondent to sanction the increments to the petitioner from the year of 2008 onwards as well as earned leave benefits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.T.M.Rajangam,
Government Advocate.

ORDER

The writ petition has been filed challenging the order of the second respondent dated 22.08.2011 and seeking for a consequential direction to sanction increments to the petitioner from 2008 onwards as well as earned leave benefits.

2. Heard both sides and perused the material available on record.

3. The petitioner was appointed as Junior Inspector / Auditor on 25.07.1984 in the respondents' office and subsequently re-designated as Junior Cooperative Auditor. The petitioner and others were recruited through employment exchange, but as per the Tamil Nadu Public Service Commission (hereinafter referred to as "TNPSC") Rules", they ought to have been selected through TNPSC. Hence, in the year 1989, the Government has decided to conduct a special test for Junior Inspectors Cooperative Audit through TNPSC. In the test, out of 351 employees, 18 Junior Inspectors, including the petitioner did not pass.

4. When steps were taken to remove the petitioner and others who did not pass the test, they had approached the Tamil Nadu Administrative Tribunal for regularization of their services. Pursuant to the order passed by the Tribunal, the Government issued G.O.Ms.No.445, Finance (Cooperative Audit) Department, dated 20.12.2005, whereby regularizing the service of the petitioner with effect from 16.10.1989 i.e., the next day of the special test conducted by TNPSC.

5. It is the grievance of the petitioner that despite the Government Order being issued, increments from 2008 were stopped without assigning any reason. Thereafter, the petitioner made a representation asserting that the Government had issued G.O.Ms.No.446 dated 30.12.2010, directing the respondents to sanction increments as wells as earned leave. However, these benefits were not granted. One of the co-employees Mr.Natarajan had approached this Court in W.P.No.15593 of 2011, whereby the respondents were directed to sanction the increments annually to the petitioner along with earned leave, in light of G.O.Ms.No.446 dated 30.12.2010. Subsequently, the petitioner had made a request to implement the G.O.Ms.No.446, however, the claim came to

be rejected, hence, the petitioner preferred the present writ petition.

6. The respondents have filed a detailed counter stating that the petitioner had failed in the special qualifying test. However, G.O.Ms.445 dated 20.12.2005, allowed the regularization of the petitioner's services despite failing the test. But, no specific directions were given regarding the declaration of probation and subsequent increments, even though the petitioner did not pass the Departmental and Special tests.

7. For ease of reference, paragraph 7 of the Counter affidavit is extracted hereunder:

> *"7. Regarding Para 9 of the affidavit it is submitted in G.O.Ms.No.445 Finance (CA) Department dated 20.12.2005, 10(a)(i) Junior Cooperative Auditors who had failed in the Special Qualifying Test were exempted from passing the Special Qualifying Test and their services was regularised with effect from 16.10.1989 Fore Noon. As per the instruction contained in the Director of Cooperative Audit, Chennai Proceedings R.C.0006/2006 OPI dated:08.11.2006 orders were issued in Assistant Director of Cooperative Audit, Villupuram, Proceedings R.C.5027/2005 dated:27.12.2006 Commencing his probation from 16.10.1989 Fore Noon. (probation period 2 years) with instructions to submit the details of Tests passed by*

them as prescribed in the Adhoc Rules (Rule No.9.10 and 11) for Junior Cooperative Auditors in the Cooperative Audit Department to declare probation completion order. The petitioner submitted a letter stating that he has not fully passed all the Tests prescribed for Junior Cooperative Auditors post.

In the above circumstances, in G.O.M.S.No.446. Finance (CA) Department dated 30.12.2010 orders were issued giving relaxation form Special rules ie. educational Qualification, Pay protection, sanction of annual increments and leave benefits and ordered to give the above benefits as already given to the 330 Junior Cooperative Auditors who had passed the Special Qualifying Test conducted by the TamilNadu Public Service Commission as most of them aged, retired / due to retire from Government Service. But no Specific instruction were given regarding declaration of probation, Sanction of 2nd and subsequent increments even though they have not fully passed Departmental Tests and Special Tests. Till date the petitioner has not passed the Cooperative Management - Part-I, Banking and Account Test for Subordinate Officers-Part-I. Hence, He was not sanctioned 2nd and subsequent increment, Selection Grade and Senior Cooperative Auditor promotion. This fact was also intimated to the petitioner in our office memo R.C.318/2011 Estt., dated 22.08.2011. The petitioner earned leave Account was recalculated from 16.10.1989 and necessary entries made in the Service Register of the petitioner and this fact was also informed to the petitioner in our office memo R.C.318/2011 dated 31.10.2011.

Further, I submit in G.O.Ms.No.446 Finance (CA)

Department dated 30.12.2010, it is clearly stated that educational Qualification, Pay protection, sanction of Annual increments and leave benefits as already given to the 330 Junior Cooperative Auditors who had passed the special Qualifying Test to the 21 Junior Cooperative Auditors who had not passed the special Qualifying Test conducted by the TamilNadu Public Service Commission. But, Junior Cooperative Auditors who had passed the special Qualifying Test were given increment, promotion for the post of Senior Cooperative Auditor only after fully passed the Departmental Tests and special Tests and declaration of probation only. So, the contention of the petitioner is not acceptable."

8. It could be seen that even though the petitioner did not clear the special qualifying test conducted by the TNPSC for regularization of services, the Government had issued G.O.Ms.No.445 dated 20.12.2005 by allowing the regularization of the petitioner and others with effect from 16.10.1989. While the services had been regularized and the first increment was paid to the petitioner, subsequent increments has not been paid only due to the fact that the petitioner did not pass any special qualifying test. Despite the grant of relaxation in light of G.O.Ms.No.446, no order has been issued permitting the payment of the subsequent increments due to failure to pass the test.

9. In view of the above, the relief sought in the writ petition cannot be accepted. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
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G.ARUL MURUGAN, J.

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