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W.P.Nos.21541 &21542 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2024

PRONOUNCED ON : 05. 01.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.Nos.21541 and 21542 of 2016

N.Sekar ...Petitioner in W.P.No.21541 of 2016

V.K.Thiyagarajan ...Petitioner in W.P.No.21542 of 2016

versus

1. The Registrar of Cooperative Societies,
NVN Maligai,
No.170, EVR Periyar Salai,
Kilpauk, Chennai-600 010.
2. The Joint Registrar of Cooperative Societies,
(Finance and Banking),
O/o The Registrar of Co-operative Societies,
Kilpauk, Chennai-600 010.
3. The Additional Registrar of Cooperative societies,
(Finance and Banking),
O/o The Registrar of Co-operative Societies,
N.170, EVR Periya Salai,
Kilpauk, Chennai-600 010. Respondents in both the W.Ps'

Prayer in W.P.No.21541 of 2016: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified Mandamus to call for records relating to 1st respondent's proceedings in Rc.No.113839/2014/EMI dated 01.04.2016 to quash the



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same and to consequently direct the respondents to forthwith promote the petitioner as Senior Inspector of Cooperative Societies/ Senior Cooperative Auditor on par with the juniors and to extend all other benefits both service and monetary.

Prayer in W.P.No.21542 of 2016: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified Mandamus to call for records relating to 1st respondent's proceedings in Rc.No.113839/2014/EMI dated 12.04.2016 to quash the same and to consequently direct the respondents to forthwith promote the petitioner as Senior Inspector of Cooperative Societies/ Senior Cooperative Auditor on par with the juniors.

In both W.Ps':

For Petitioner : M/s.L.Chandrakumar

For Respondents : Mr.S.Ravikumar
Special Government Pleader

ORDER

This Writ Petition is filed for issuance of Certiorarified Mandamus to quash the first respondent's proceedings in R.C.No.113839/2014/EMI dated 01.04.2016 and consequently direct the respondent to forthwith promote the petitioner as Senior Inspector of Cooperative Societies/Senior Cooperative Auditor on par with the juniors and to extend all other benefits both service and monetary.



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2. The facts in brief as per the affidavit of the petitioners is that the petitioners were initially appointed under 10 (a)(i) of the General Rules for Tamilnadu State and Subordinate Services. A special qualifying examination to regularize the temporary Junior Inspector of Cooperative Societies was conducted by Tamil Nadu Public Service Commission on 15.10.1989 and declared that about 1235 candidates were successful.

3. The petitioners who were unsuccessful in the said examination were terminated from service with effect from 26.04.1991. Challenging the said order of termination, the petitioners have approached the Tamilnadu Administrative Tribunal, an interim stay was granted and petitioner was reappointed on 12.07.1991. Subsequently, the O.A was dismissed, thereby, petitioners were again terminated. Aggrieved by the dismissal of the O.A., petitioners have filed W.P and as per the interim orders passed by this Court, the petitioners were re-appointed again on 03.04.2003. Finally the Division Bench of this Court vide dated 09.01.2008, directed the respondent to grant the benefit of G.O.MS.No.445 (Finance-Cooperative Audit) Department on 20.12.2005 to the petitioner and to regularize the service of the petitioners.



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Accordingly, petitioners services were regularized with effect from 03.04.2003. The petitioners were extended with seniority in the post of Junior Inspector of Cooperative Society on 01.01.2011. The petitioners filed a representation dated 12.12.2014 for inclusion and promote them as Senior Inspector of Cooperative Society in the panel at the appropriate place. The said representation was rejected by quoting Proviso to Rule 9 of the Tamil Nadu State Sub-Ordinate Service Rules. Challenging the same, the petitioners have preferred these Writ Petitions.

4. Learned Special Government Pleader appearing for the respondents has contended that the seniority in the category of Junior Inspector was fixed on 01.01.2011 and in that list N.Sekar was fixed as 44 A and V.K.Thiyagarajan was fixed as 44 B vide Additional Registrar (Finance and Banking) letter No.16487/2013/EM2, dated 12.07.2014. It is further submitted that in Proceedings No.Rc.59910/2014/EM1, dated 21.11.2014 Joint Registrar (Finance and Banking), Office of the Registrar of Cooperative Societies, Chennai has issued orders for promoting the Juniors Inspectors (up to Seniority, No.217) who were found suitable for inclusion in the annual panel of Junior Inspectors fit for promotion as



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Senior Inspector as on 01.05.2014.

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5. Learned counsel for the respondent further submitted that petitioners have served more than five years on deputation in other department (Regional Deputy Director of Audit for Milk Cooperative, Chennai) and not completed one year service in the parent department viz., Co-operative Department as per the Proviso the Rule 9 of the General rule for Tamil Nadu State and Subordinate Service on the crucial date of the panel as on 01.05.2014, thereby, they are not eligible for the inclusion in the panel of Junior Inspectors fit for promotion as Senior Inspectors as on 01.05.2014.

6. It is submitted by the learned counsel for the petitioner that after petitioner's service was regularized and they were placed at 44 A and 44 B. Though their juniors who ranked below the rank of petitioners were promoted but the petitioners were not promoted. It is submitted that being deputed to other department and continuing there on account of administrative actions by the respondent for which the petitioners cannot be found fault and cannot be made to suffer, thereby sought for suitable



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directions.

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7. Heard the learned counsel for the petitioner and learned Special Government Pleader appearing on behalf of the respondents and carefully perused the materials placed on records.

8. Proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules reads as follows:

“ Provided that a member of a service who is appointed to another service outside his regular line and is continuing in that service beyond five years shall not be considered for promotion or by appointment by recruitment by transfer to a higher post in his regular line even though he is otherwise qualified under the rules for such promotion or appointment unless he returns to the former service and puts in a fresh service for a period of not less than one year in the former service”

9. Considering the above Proviso it is clear that if a person continues to work outside his regular line and continues beyond five



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years, he shall not be considered for promotion or by appointment or by transfer to higher post, eventhough he is otherwise qualified in his regular line, until he returns to his regular line and completes a fresh service of not less than one year. In the case on hand, admittedly petitioners have completed more than five years of service outside his regular service and have not put up one year service in the regular line to consider for next promotion. It is true that petitioners may not be responsible for working beyond five years of service outside his regular line and not coming back to the regular service and working for one year for considering their promotion. As long as Proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules is in statue, the request of the petitioners cannot be considered. If at all the petitioners are aggrieved, they should have challenged the Proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules. However as seen from the prayer, the petitioners have not sought for striking down the above said Proviso.

10. At the end of the argument, learned counsel for the petitioners has submitted that since the petitioners were retired from service, considering the prayer of the petitioners even on notional basis without



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any monetary benefit, if promotion is given, the petitioner will get some relief in the terminal benefits. This Court has seriously considered the submissions made by the learned counsel for the petitioner, but not inclined to consider the same as it affects similarly placed many such persons and it opens Pandora box. As long as the Proviso to Rule 9 of the Tamil Nadu State and Subordinate Service Rules is still there, the relief sought for by the petitioners cannot be granted.

11. Accordingly, these Writ Petitions are dismissed. No costs.

05.01.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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To
1. The Registrar of Cooperative Societies,



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Dr.D.NAGARJUN, J.
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