



W.A.No. 1455 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.06.2024

DELIVERED ON: 08.08.2024

CORAM:

THE HON'BLE MR. D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HON'BLE MR.JUSTICE KUMARESH BABU

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and CMP. No. 9388 of 2022

Salem District Central Co-operative Bank Ltd.,
rep. By Joint Registrar/Special Officer,
Salem. .. Appellant

Vs

1. A.Murugesan
2. Government of Tamil Nadu
Rep. By Secretary to Government,
Food, Co-operation and Consumer Protection Department,
Fort St.George,
Chennai-600009.
3. The Registrar of Co-operative Societies,
Chennai-600010.



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4. The Joint Registrar of Co-operative Society,
Salem Region, Salem-636007. ..Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.07.2019 in W.P.No.23049 of 2008.

For Appellant : Mr A.Selvendran

For Respondents : Mr.M.Narayanaswamy - R1
Mr V.Manoharan, AGP- R2 to R4

J U D G M E N T

(Order of the Court was made by the Hon'ble Acting Chief Justice)

Aggrieved by the order passed by the writ court in W.P.No.23049 of 2008, dated 01.07.2019, the present writ appeal has been filed by the appellant.

2. Before advertng to the submissions made by learned counsel for the parties, a brief reference to the relevant facts is necessary:



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2.1. The 1st Respondent joined service as an Assistant in the Salem District Central Co-operative Ltd on 25.03.1987, and was placed at No. 2 in the seniority list for promotion to Assistant Manager. Based on the occurrence which said to have taken place in the year 1996 with regard to permitting to withdraw a sum of Rs.33,000/- by one S.Annapoorni, he was suspended from service in the year 2003 and a charge memo was issued on 08.02.2004 and after enquiry, the order of suspension was revoked and he was imposed with punishment of stoppage of increment for three years without cumulative effect. Based on the revision filed by the 1st respondent, the said punishment was reduced to two years by order of the 1st appellant dated 11.06.2007. Therefore, the 1st respondent is eligible for consideration for promotion to the post of Assistant Manager as on 01.08.2008, i.e on date the panel was drawn. The appellants, considering the fact that his punishment period has ended prior to the date of panel drawn, did not consider him for promotion, however his juniors were promoted. Hence, 1st respondent filed a writ petition in W.P. No. 23049 of 2008 before this Court. This Court by order dated 01.07.2019 directed the authorities to



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promote the 1st Respondent on par with juniors. Aggrieved by the said order, the present writ appeal is filed.

3. Mr. A.Selvendran, learned counsel appearing for the appellant-Society has submitted that the learned single judge did not consider the fact the 1st respondent was imposed with the punishment for permitting a person to withdraw money from the deceased person in the year 1996 and the legal heirs of the deceased, preferred a complaint only in the year 2003. After receipt of the complaint, the appellant-society had initiated action and awarded punishment of stoppage of increment for three years and the same was subsequently reduced to two years. Since the promotion panel was drawn on 01.08.2008, taking into consideration the conduct of the 1st respondent three years before the promotion, the 1st respondent was not considered for promotion. Subsequently, he was promoted as Assistant Manager in the year 2010. Therefore there was no error on the part of the appellant-society in granting promotion to the 1st respondent.



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4. The learned counsel for the appellant has further submitted that the learned Single Judge without considering Rule 7(B) of Special By-law, which mandates that "an employee is not subjected to any punishment during the period of three years prior to the date of consideration for promotion", has directed the authorities concerned to grant promotion to the 1st respondent from the crucial date i.e 01.08.2008, which is unsustainable in law and liable to be set aside. In support of his contentions the learned counsel has placed the following judgments;

- i. Judgment of Hon'ble Full Bench of this Court in W.A.(MD).Nos. 315 of 2010 and etc., batch, dated 27.04.2011 in the case of The Deputy Inspector General of Police, Thanjavur Range, Thanjavur & another Vs.V.Rani (*reported in 2011 SCC Online Mad 632*)
- ii. Judgment of Hon'ble Division Bench of this Court made in W.P.(MD)No. 6542 of 2010, dated 02.07.2012 in the case of A.Vijayakumar Vs.1.The Regional Joint Registrar of Co-operative Societies, Kajamalai, Trichy & another.



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5. The learned counsel for the 1st respondent has submitted that due to delay on the part of the 4th appellant in issuing charge memo, not initiating disciplinary proceedings immediately and imposing punishment long after the alleged irregularity, cannot be put against the 1st respondent for denying his promotion. The 1st respondent is fully qualified and fit to be promoted as Assistant Manager, when his juniors were promoted on 01.08.2008. The writ court has rightly considered the above factual aspects and directed the authorities concerned to grant promotion from the date on which his juniors were promoted. Therefore the order of the writ court is perfectly valid in law and does not require any interference by this Court.

6. Heard Mr. A.Selvendran, learned counsel appearing for the appellant and Mr.Narayanaswamy, learned counsel appearing for the 1st respondent and Mr.V.Manoharan, learned Additional Government Pleader appearing for respondents 2 to 4 and perused the materials available on record.



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7. The contention of the appellant-department is that the punishment of stoppage of increment for a period of three years, vide proceedings dated 20.05.2004, was reduced to two years, vide proceedings of the 4th respondent dated 11.06.2007. This reduction still rendered the 1st respondent ineligible for the promotion panel drawn on 01.08.2008, as the conduct of employees must be considered for the three years preceding the promotion list as per 7(B) of Special By-laws, which mandates that "an employee is not subjected to any punishment during the period of three years prior to the date of consideration for promotion". Therefore, the impugned order of the writ court directing the appellant to promote the 1st respondent w.e.f 01.08.2008 is prima facie illegal and liable to be set aside.

8. We have perused the impugned order of the writ court. Eventhough the 1st respondent has challenged the explanation under Clause 7(B) of the Special By-laws relating to service conditions of the employees of Salem District Central Co-operative Bank Ltd., during the course of arguments before the writ court, the 1st respondent restricted his claim for a direction to the 4th appellant to consider the case of the appellant for promotion to the



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post of Assistant Manager, when his juniors were being promoted on 01.08.2008.

9. Based on the request made by the learned counsel for the 1st respondent, the learned Single Judge has elaborately considered the case of the 1st respondent by relying upon the Rule 149 of Tamil Nadu Cooperative Societies Rules, 1989 and G.O.Ms.No.368, P & AR Department, dated 18.10.1993 and directed the 4th appellant to promote the 1st respondent retrospectively with all consequential benefits, with effect from 01.08.2008 without reference to explanation to By-law 7(B), which in the considered opinion of this Court is unwarranted.

10. Tamil Nadu Cooperative Societies Rules, 1988 stipulates the conditions of service of employees of the society under the head 'Subject matter of by-laws' as follows;

"6. Subject matter of by-laws :

.....

.....

(mm) subject to the provisions contained in sections 73 to 77 and the rules made and orders issued thereunder, special by-laws, specifying the authority competent to fix, revise or regulate the strength of the establishment, the scales of pay and allowances of the employees of



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the society; and the conditions of service of employees of the society providing for —

(A) the age at entry in service and for retirement on superannuation;

(B) the minimum educational and other qualifications for the several categories of employees;

(C) the method of recruitment of candidates;

(D) the service conditions including leave to which employees are eligible, the authority competent to sanction leave, the penalties that may be imposed by way of disciplinary action and the authority competent to impose such penalties and the appellate authority in respect of disciplinary action taken by such authority;

(E) the establishment of employees provident fund; and

(F) payment of gratuity on retirement or death.

(2) The by-laws may also deal with such other matters incidental to the organisation and working of the society and the management of its business as may be deemed necessary."

11. It has been clearly stated in the above by-laws that all matters relating to the service of employees, including disciplinary proceedings and consequential punishments, are to be dealt with according to the guidelines framed in the respective Special By-laws and as such, this Court cannot go



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beyond these Special By-laws.

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12. In the case at hand, the appellant department initiated disciplinary proceedings against the 1st respondent and awarded a punishment of stoppage of increment for a period of three years, which was subsequently reduced to two years as per the directions of the writ court. The promotion to the next higher post can be considered by the appellant strictly as per the guidelines framed under 7(B) of the Special by-laws, Therefore, in view of the specific guidelines in the Special By-laws, it is the bounden duty of the Court to decide the case solely in accordance with the Special By-laws concerned, which was under challenge before the writ court by the 1st respondent.

13. It is thus necessary to extract clause 7(B) of the Special By-laws, which was under challenge before the writ court by the 1st respondent:

"7(B). Promotion:

All promotions from one category of post to the immediate next higher category of post shall be made only from the respective feeder category of post and on the basis of seniority and subject to merit and ability.



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Provided that no employee shall be considered for promotion to a higher category of post unless he has put in a satisfactory service of not less than three years in the present category of post held by him.

EXPLANATION:

For the purpose of these Special By-laws, the term satisfactory service means a service not having been or being subjected any punishment during a period of three years prior to the date of consideration for promotion."

14. Interpretation of the Explanation of the above By-law:

The above explanation in the Special By-laws specifies that for an employee to be considered for promotion, his/her service record must be free from any disciplinary actions or punishments during the three years immediately preceding the date of consideration for promotion. This means:

i. No Punishment in the past three years:

The employee must not have been subjected to any disciplinary punishment at any point during the three-year period before the promotion consideration date.



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ii. Ongoing and past punishments:

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This includes both any punishment that has been imposed and is currently in effect, as well as any that was imposed and completed within the three-year period. The key requirement is a completely clean service record for the entire three-year period.

Based on the interpretation of the explanation provided in the Special By-laws, We conclude as follows;

15. Conclusion:

15.1 The Special By-laws require that an employee must have a satisfactory service record, defined as not having been or being subjected to any punishment, during the three years prior to the date of consideration for promotion. In the present case, the 1st respondent was subjected to a punishment of stoppage of increment for three years starting from 20.05.2004, which was later reduced to two years, ending on 20.05.2006.



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15.2 The panel for promotion to the post of Assistant Manager was prepared on 01.08.2008. To be eligible for promotion, the 1st respondent must have a satisfactory service record from 01.08.2005 to 01.08.2008. Since the punishment period ended on 20.05.2006. The satisfactory service period from 21.05.2006 to 01.08.2008 falls short of the necessary three years by approximately 9.5 months. Therefore, as per guidelines framed under Clause 7(B) of Special By-laws, the 1st respondent is not eligible for consideration for promotion to the post of Assistant Manager as on 01.08.2008.

15.3 In view of the above, the impugned order of the learned Single Judge, directing the appellants to grant promotion to the 1st respondent retrospectively is unsustainable in law and liable to be set aside. The 1st respondent is eligible for next promotions after completion of his satisfactory period of service i.e w.e.f. 21.05.2009. We finds some force on the contention of the learned counsel appearing for the appellants.



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16. In fine, the order of the writ court made in W.P. No. 23049 of 2008, dated 01.07.2019, is set aside. Consequently, the proceedings dated 25.01.2022 issued by the appellant, granting retrospective promotions to the 1st respondent pursuant to the impugned order of writ court is also set aside. The writ appeal is allowed. No costs.

(D.K.K., A.C.J.,) (K.B.J.,)

08.08.2024

Internet: Yes
Index : Yes
Speaking Order

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To

1. The Secretary to Government,
Food, Co-operation and Consumer Protection Department,
Fort St.George, Chennai-600009.



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2. The Registrar of Co-operative Societies,
Chennai-600010.
3. The Joint Registrar of Co-operative Society,
Salem Region,
Salem-636007.



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THE HON'BLE ACTING CHIEF JUSTICE

and

K. KUMARESH BABU, J.

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