



W.P(MD).No.20465 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	03.12.2024
Pronounced on	12.12.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20465 of 2023
and
W.M.P(MD) No.16916 of 2023

1. S.Barathi
2. S.Loganathan
3. M.Ravimoorthi ... Petitioners

Vs.

1. The State of Tamil Nadu,
Through its Principal Secretary to
Government Co-operation,
Food and Consumer Protection Department,
Fort St.George, Chennai.
2. The Registrar of Co-operative Societies,
No.170, EVR Periyar High Road,
Kilpauk, Chennai – 600 010.
3. Tamil Nadu Co-operative State
Agriculture and Rural Development
Bank Limited,
No.181, Luz Church Road, Mylapore,
Chennai – 600 004. ... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring that the bylaws amendment to Byelaws of the third respondent Bank vide proceedings of the second respondent dated 14.08.2023 will not bind and will have no application to the petitioners in respect of changing the nomenclature for the posts of Development Officers and Account Officers as Assistant Managers and will have no with retrospective effect, so as to take away the vested rights of the petitioner to get themselves promote the petitioners as Assistant Managers with effect from 26.11.2014 when it became due to them and also to their consequential further promotions with all service and monetary benefits.

(Prayer amended vide Court order dated 06.03.2024 in W.M.P(MD) No. 5011 of 2024 in W.P(MD) No.20465 of 2023)

For Petitioners : Mr.V.R.Shanmuganathan
For Respondents : Mr.V.Veera kathiravan
Additional Advocate General
Assisted by
Mr.D.Sasikumar
Additional Government Pleader

ORDER

The instant Writ Petition has been filed by three Assistant Development Officers working in Tamil Nadu State Co-operative



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Agriculture and Rural Development Bank Limited, seeking a Writ of Declaration, to declare that the amendment of the Bye-laws of the third respondent Bank, dated 14.08.2023, will not bind them and will have no application to them in respect of changing the nomenclature for the posts of Development Officers and Account Officers as Assistant Managers. A further declaration has been sought for that such an amendment will not have retrospective effect, so as to take away the vested right of the petitioner to get themselves promoted as Assistant Managers with effect from 26.11.2014 and also for consequential promotion with all service and monetary benefits.

(A) 2. The facts leading to the filing of the present writ petition are as follows:

(i) The petitioners herein were working as Assistant Development Officers in the third respondent Bank at the time of filing of the writ petition. Pending writ petition, they have been promoted as Assistant Managers.

(ii) The third respondent Bank has three wings of employees, namely, Legal wing, Field wing and Accounts wing. The petitioners



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herein have entered into a service as Land Valuation and Estimation Officer in the field wing, on 10.05.1995. They were promoted as Assistant Development Officers in the said wing on 30.05.2011. Their next level of promotion is Assistant Manager. According to the petitioners, they should have been promoted as Assistant Managers way back in the year November 2014 itself.

(iii) It is the further contention of the writ petitioners that the employees of one wing cannot enter into the other wing by way of any integration or promotion, as per the original bye-laws. On 22.07.1996, under Section 12(3) of Industrial Dispute Act, settlement was entered into between various employees Unions and the Management of the Bank before the Joint Commissioner of Labour (Conciliation) Chennai. As per the said settlement, it was agreed that, for promotion to the post of Assistant Manager, a ratio of 2:1:1 will be followed. In other words, two employees from legal wing, one from Assistant Development Officer and one from Accounts Officer could be promoted to the post of Assistant Manager. However, the said settlement was not enforced in view of the fact that the service conditions incorporated in the bye-law remained un-amended.



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(iv) It is the further submission of the petitioners that since settlement was not enforced, any one from the Accounts wing or the Legal Wing would not be entitled to be promoted as an Assistant Manager in the field wing. The non-graduate Assistant Development Officers working in the field wing could get promotion as Development Officers and there is no further promotion for them. Similarly, non-graduate Superintendents working in the accounts wing could get promoted as Accounts Officer and later as Accounts Manager in the Accounts Wing.

(v) It is further contended that some of the graduate Assistant Development Officers working in the field wing and graduate Superintendents working in the accounts wing instead of waiting to be promoted as Assistant Manager (Graduates), they opted to get themselves promoted as Development Officer and Accounts Officer knowing fully well that there is no further promotion for them as Assistant Managers.

(vi) It is further contended on the side of the petitioners that they are waiting from November 2014 onwards to get themselves promoted as Assistant Managers in view of the fact that all of them are graduates. The petitioners herein had filed W.P(MD) No.26702 of 2022 seeking a



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Mandamus to consider them for promotion from the post of Assistant Development Officer to Assistant Managers and Managers. The said writ petition was disposed of by this Court on 28.11.2022, wherein the Principal Secretary to Government, Co-operation Food and Consumer Protection Department was directed to consider the representation dated 22.09.2022 and pass orders within a period of twelve weeks from the date of receipt of the copy of this order.

(vii) Before the Principal Secretary could pass orders the Managing Director of the third respondent Bank had passed an order on 20.03.2023, rejecting the request of the writ petitioners. The first petitioner herein had filed W.P(MD) No.7720 of 2023 seeking to quash the order dated 20.03.2023 and to promote them as Assistant Managers and then as Managers. Another writ petition was filed in W.P.(MD) No. 10293 of 2023 seeking a Mandamus to promote the Assistant Development Officers to Assistant Managers and then as Managers.

(viii) When the above said two writ petitions were pending, the Additional Registrar of Co-operative Societies had issued a communication to the Board of Directors of the third respondent Bank on 16.06.2023, invoking under Section 12 (1) of the Tamil Nadu Co-



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operative Societies Act, 1983, directing the Bank to amend the bye-law No. 4.1.(c) (e) of the bye-laws of the Bank.

(ix) On 26.06.2023, this Court had disposed of W.P(MD) No.7720 and 10293 of 2023 by way of a common order. This Court was pleased to dismiss W.P(MD) No.7720 of 2023. In W.P(MD) No.10293 of 2023, this Court has directed the third respondent Bank to consider the request for being promoted as Assistant Managers and a further direction was issued that the petitioners have to be considered first before amendment of the bye-laws.

(x) On 05.07.2023, 14.07.2023 and on 07.08.2023, the petitioners have given various representations to the Managing Director of the third respondent Bank requesting them to consider their request for promotion as Assistant Managers first, before amendment of the bye-laws.

(xi) On 14.08.2023, the Additional Registrar of Co-operative Societies has registered the amendment of the bye-laws invoking Section 12(2) of Tamil Nadu Co-operative Societies Act, 1983, in view of the fact that the previous directions issued to the Co-operative Societies have not been followed. The petitioners were promoted as Assistant Managers by way of proceedings dated 22.08.2023.



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(xii) It is the grievance of the petitioners that the Superintendents, who are junior to them got promoted as Accounts Officer in their wing (though they were graduates) and in view of the amendment, the post of Accounts Officers has been integrated with the post of Assistant Manager. Now the juniors claimed that they have become Assistant Managers right from the date on which they became Accounts Officers. Thereafter, promotion order issued to them as Managers (considering their seniority in the post of Assistant Managers) on 22.08.2023, the same day on which the petitioners were promoted as Assistant Managers.

(xiii) In view of the above said facts, the present writ petition has been filed by the Assistant Development Officers (now working as Assistant Managers) for a declaration that the amendment of the bye-law would not bind them or it cannot have a retrospective effect. It has been further prayed that the amendments cannot take away the vested rights of the petitioners to get themselves promoted from November 2014 onwards. Had they been promoted in November 2014, they would have been seniors and by this time they would have been promoted as Managers. Therefore, the present writ petition.



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(B) 3. The contentions of the learned counsel appearing on either side are as follows:

(i) The learned counsel appearing for the writ petitioners herein has contended that all the three wings of the Co-operative Bank are water tight compartments prior to Section 12(3) Settlement dated 22.07.1996. Only in the said settlement some of the posts were integrated and that too, the promotion have to be strictly restricted to 2:1:1 ratio. This settlement was not given effect to in view of the non-amendment of the bye-laws. The petitioners were entitled to get promoted as Assistant Managers in November 2014 itself. Though they have given several representations, they were not considered. Suddenly, when the promotion was due to them, the posts are integrated and their juniors, who were working as Account Officers (graduates holding non-graduate post) have got re-designated themselves as Assistant Managers and marched over the petitioners and became Managers.

(ii) The learned counsel appearing for the petitioners herein had further contended that the bye-laws of the Co-operative Bank have been amended with retrospective effect, thereby, considering the post of Account Officer equivalent to Assistant Manager right from the year



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2014 onwards, such an order passed by the respondent authorities, granting retrospective promotion to the Accounts Officers would not be legally sustainable.

(iii) The learned counsel appearing for the petitioner herein had further contended that this Court, in its order dated 26.06.2023, has directed the respondent authorities to consider the case of the petitioners first and thereafter consider the amendment of bye-laws. However, the authorities have amended the bye-laws and thereafter, granted promotion to the writ petitioners as Assistant Managers, while promoting the Accounts Officers directly as Managers without appointing them as Assistant Managers. He further pointed out that this Court had granted four weeks time to the authorities to complete the exercise. The respondents herein had filed Miscellaneous Petition before the writ Court seeking extension of time, on the ground that the compulsory registration of amendment of bye-law is under active consideration. While he sought for time to comply with the orders of this Court, immediately they had approved the amendments on 14.08.2023 and gave promotion orders as Managers to the Accounts Officers, who are juniors to the writ petitioners. Therefore, it is *mala fide* exercise of power by the



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respondents herein.

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(iv) The learned counsel appearing for the petitioners has further contended that though right of promotion is not a vested right, but right to be considered for promotion is a fundamental right and the same has been affected for more than 10 years. He further contended that ratio as contemplated under the settlement for promotion to the post of Assistant Managers has not been followed from the year 2014 till bye-law was amended. Now, the ratio has been deleted in the amended bye-law and the post of Accounts Officer has been integrated as an Assistant Manager. He further contended that under Section 12(1) notice as well as the final orders issued under section 12(2) of Tamil Nadu Co-operative Societies Act, a specific note has been placed to the effect that only after all the Assistant Development Officers have been promoted as Assistant Managers, the bye-law shall be amended. However, in violation of the same, the bye-laws have been amended and the promotional opportunities of the writ petitioners have been affected when they have waited from the year 2014 onwards. It is not known why such an amendment is brought in now to the disadvantage of the writ petitioners. Hence, he prayed for allowing the writ petition and to grant promotion to



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the writ petitioners as Assistant Managers from 26.11.2014 and to grant further promotion with attendant benefits.

4. Per contra, Mr.Veera Kathiravan, learned Additional Advocate General appearing for the respondents herein had contended that by way of amendment of the bye-laws, Section 12(3) of the Industrial Dispute Act settlement entered into between the employees Union and the Management has been made enforceable. He further contended that there are 14 posts prior to the amendments of bye-law. Out of the said 14 posts, 6 of them have been deleted and it has been reduced to 8 posts. The post of Assistant Development Officers and Superintendents in the accounts wing being equal, the Assistant Development Officer posts has been abolished and the post of Superintendents retained. He further pointed out that the posts of Development Officers and Account Officers have been deleted and they are restructured as Assistant Managers. He further contended that the promotional post from Accounts Officer namely, the Accounts Manager has been abolished. In view of restructuring of the various posts, the vacancies in the cadre of Assistant Manager has got increased from 24 to 35 and therefore, the petitioners



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have also been promoted.

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5. The learned Additional Advocate General appearing for the respondents further contended that the Registrar of Co-operative Societies is having powers under Section 12(1) of the Act to issue directions for compulsory amendment of bye-laws and if the same is not carried out, the power is vested with the Registrar for compulsory registration of amendment of bye-laws. Therefore, the third respondent Bank cannot be found fault with for the compulsory registration of bye-laws made by the Registrar of Co-operative Societies. Once, the bye-laws of the Society were amended, all the employees of the Society, namely the Bank are bound by the said bye-law. He further contended that the bye-laws that are in force on the date of consideration of promotion alone have to be taken into consideration. Therefore, the petitioners cannot rely upon the old bylaws which were in force when the vacancies arose for the post of Assistant Manager.

6. The learned Additional Advocate General has further contended that as far as the note in the compulsory registration order dated



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14.08.2023 is concerned, it only points out that after the existing Assistant Development Officers are promoted as Assistant Managers, the future promotions may be made from the cadre of Superintendents. This note has been inserted in view of the fact that the Assistant Development Officer post has been abolished and it has been re-designated as Superintendent. Therefore, the said note cannot be taken as an advantage of by the petitioners.

7. The learned Additional Advocate General has further contended that though the Superintendents may be juniors to Assistant Development Officers, yet they got promoted as Account Officers in the year 2014 itself in the accounts wing. All of them are graduates. Even prior to the amendment of bye-law, the post of Development Officer, the Assistant Manager and Accounts Officer were under the same pay scale. Therefore, the Superintendents in the Account Wing, though they were graduates, they opted to get themselves promoted as Accounts Officer. Now by way of amendment of bye-laws, the post has been re-designated as Assistant Managers. In view of the fact that they are in the cadre of Assistant Manager from the year 2014 onwards, now they had been promoted as



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Managers. Therefore, the petitioners cannot have any grievance over the promotion granted to the Accounts Officers re-designated the Assistant Manager as Managers. Hence, he prayed for dismissal of the writ petition.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

(C) Discussion:

9. The facts narrated above and the submissions made on either side as recorded by this Court, would clearly reveal that the primary grievance of the writ petitioners is that, the Superintendents working in the Accounts Wing, though they were juniors to them, have been re-designated as Assistant Managers with effect from 2014 and now been promoted as Managers, while the petitioners have been promoted as Assistant Managers only now.



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10. Though the three wings of the third respondent Bank remained as watertight compartments prior to Section 12(3) of the Industrial Disputes Act settlement dated 22.07.1996, in the said settlement, there was an integration to the effect that the promotion could be made to the post of Assistant Manager in the ratio of 2:1:1 from legal wing and from accounts wing also, Since the bye-laws were not amended 12(3) Settlement relating to ratio of promotion remained unenforceable.

11. A perusal of the notice issued by the Registrar of Co-operative Societies under Section 12(1) of the Act, on 16.06.2023 reveals that permission was granted by the Registrar to amend the bye-laws. Way back on 18.11.2020 and on 02.12.2022, the Registrar of Co-operative Societies had already instructed the concerned Bank to amend the special bye-laws of the Bank. Since there was no response, notice has been issued under Section 12(1) of the Act on 16.06.2023. Even thereafter, the third respondent Bank has not amended the special bye-laws. Therefore, the Registrar of Co-operative Societies was constrained to invoke Rule 12 (2) of the Co-operative Societies Act and effect compulsory registration of amendment of bylaws by way of proceedings dated



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14.08.2023. As per Section 12(3) of the Co-operative Societies Act, any amendment of the bye-laws registered under Section 12(2) of the Co-operative Societies Act will have same effect as an amendment of bye-laws registered under Section 11 of the Act.

12. A perusal of the Section 11(8) of the Co-operative Societies Act reveals that any amendment of the bye-laws shall take effect from the date specified in the amendment and if no such date is specified, amendment shall take effect from the date on which it is registered. In the present case, in the order under Section 12 (2) of the Act, no specific date has been mentioned from which the amendment would take effect. Therefore, it is clear that the amendment shall take effect only from the date of registration namely, on 14.08.2023.

13. The amendment to the bye-laws are being objected to primarily on the ground that the amendment is being given retrospective effect so as to affect the vested right of the writ petitioners in getting promotion from the post of Assistant Development Officer to the post of Assistant Managers. From the discussion supra, it is clear that the amendments to



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the bye-laws have come into effect only from 14.08.2023 and they have not been given any retrospective effect so as to affect any right of the writ petitioners.

14. It is the further contention of the learned counsel appearing for the petitioners that the vacancies arose in November 2014 and without promoting them under the old bye-laws (which prevented any one from the accounts wing for becoming an Assistant Manager), they have been granted promotion only under the amended bye-laws, which has taken away not only the seniority but also placed them below their juniors. Therefore, the bye-laws which were prevailing on the date of vacancy and when the petitioners had a vested right for promotion should have been considered. Only after promoting them, any promotion could be effected to the Superintendents or the Account Officers working in the Accounts Wing under the amended bye-law.

15. The Hon'ble Supreme Court in the judgment reported in **(2017) 3 SCC 646** in the case of **(State of Tripura and others Vs. Nikhil Ranjan Chakraborty and others)** in paragraph No.9 has held as follows:



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“9. The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in Deepak Agarwal in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended.”



16. The judgment of the Hon'ble Supreme Court reported in (2019)

4 SCC 319 in the case of (*Union of India and others Vs. Krishna Kumar and others*) in paragraph No.13 is extracted as follows:

“13. In view of this statement of the law, it is evident that once the structure of Assam Rifles underwent a change following the creation of the intermediate post of Warrant Officer, persons holding the post of Havildar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was, in our view, in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies. As the decided cases noted earlier indicate, there is no such rule of absolute or universal application. The entire basis of the decision of the High Court was that those who were recruited prior to the restructuring exercise and were holding the post of



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Havildars had acquired a vested right of promotion to the post of Naib Subedar. This does not reflect the correct position in law. The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion.”

17. A Three Judges Bench of the Hon'ble Supreme Court in a judgement reported in **(2023) 3 SCC 773 (State of Himachal Pradesh and others Vs. Raj Kumar and others)** has summarized the law relating to the applicability of old and new Rules with regard to the promotion. Paragraph No.82 of the said judgment is extracted as follows:

“82.A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's



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case must be understood in the context of the rules involved therein.

82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

82.4. The principle in Rangaiah need not be applied merely because posts were created, as it is not



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obligatory for the appointing authority to fill up the posts immediately.

82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.”

18. In view of the judgments of the Hon'ble Supreme Court cited supra, it is clear that the Service Rules which prevail when the exercise is carried out for promotion alone has to be taken into consideration and not the service Rules which were prevailing on the date when the vacancy arose. That apart, in view of the amendment of bye-laws, restructuring of the posts have been carried out and 14 posts have been reduced to 8 posts. This has resulted in a situation, where the writ petitioners have to compete with others to the post of Assistant Managers. It is not a case where the petitioners are totally excluded from being promoted as Assistant Managers. In fact after the amendment of bye-laws, the petitioners have been promoted as Assistant Managers. In such circumstances, the contentions of the learned counsel appearing for the writ petitioners that they should be promoted based upon the un-amended bye-laws is not legally sustainable.



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19. The learned counsel appearing for the petitioners herein has further contended that the graduate Assistant Development Officers, without waiting for being promoted as an Assistant Managers, have voluntarily opted to get promoted as Development Officers, knowing fully well that there are no further promotional opportunities. Similarly, the graduate Superintendents had opted to get themselves promoted as Accounts Officers knowing fully well that the next promotion is only Accounts Manager. Now, by way of integration of the posts, the graduate Accounts Officer and Development Officers have suddenly got re-designated them as Assistant Managers right from the date of their promotion. This argument is to be noted only for being rejected. The graduate Assistant Development Officers and the Superintendents, who were juniors to the writ petitioners have opted for non-graduate promotional posts. The petitioners herein had waited, targeting the Assistant Manager posts which is exclusively meant for graduates. Nobody prevented the writ petitioners from opting to the post of Development Officer, even though it is a post of post meant for non-graduates. The graduate Superintendents without waiting for Assistant



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Manager post in their Accounts Wing have opted to the promotional post of Accounts Officer in the year 2014 itself.

20. It is not in dispute that the post of Accounts Officer in the Accounts Wing and the post of Development Officer and the post of Assistant Manager in the field wing carry the equivalent pay scale. Some of the Superintendents, who were juniors to the writ petitioners have opted an easy way of promotion to non-graduate promotional posts and they were receiving higher pay scale than the petitioners from the year 2014 onwards. The petitioners have not been prevented from opting to the non-graduate promotional post namely, Development Officer in their Field Wing. Therefore, they cannot blame that Superintendents, who were juniors to them for being promoted as Managers. In fact, the petitioner's Juniors (Graduate Superintendents) got promotion in the year 2014 and they were receiving higher pay scale than the petitioners from the year 2014 onwards. Since the pay scale of Accounts Officer is equivalent to the pay scale of Assistant Manager, while restructuring the post, the authorities have rightly re-designated the Accounts Officer as Assistant Managers. On the basis of such a seniority, now they have been



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promoted as Manager on 22.08.2023. In view of the above said facts, the petitioners cannot have any grievance over the promotion of their juniors, who had a well thought out future plan. In fact, the petitioners have not chosen to implead their alleged juniors while seeking retrospective promotion from the year 2014 onwards.

21. Once an amendment is brought in, in the bye-laws of the Co-operative Society, the petitioners cannot contend that the same would not be binding upon them and seek some prayers which are contrary to the said bye-laws. In fact, without challenging the said bye-laws, only a declaration has been sought for, that the said bye-laws are not binding upon them. Such a prayer is not maintainable.

22. It is settled position of law that an employee does not have a vested right for promotion, but only has got a right for considered for promotion and that too, based upon the Rules prevailing on the date when they are considered for promotion. Therefore, the petitioners cannot freeze the amended bye-laws and go back on a time machine and claim promotion from 26.11.2014 onwards.



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23. In view of the above said deliberations, there are no merits in this Writ Petition. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Principal Secretary to
Government Co-operation,
Food and Consumer Protection Department,
Fort St.George, Chennai.
2. The Registrar of Co-operative Societies,
No.170, EVR Periyar High Road,
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Pre-Delivery Order in

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