BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

DELIVERED ON : 29.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.18707 of 2017
and
W.M.P.(MD).Nos.15086 and 15087 of 2018

R.Sathees Prabu ... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary to Government,
Finance Department,
Secretariat,
Chennai – 9.

2.The Director of Co-operative Audit,
O/o. the Director of Co-operative Audit,
Saidapet,
Chennai – 35.

3.The Joint Director of Co-operative Audit (Head Quarters),
O/o. the Joint Director of Co-operative Audit,
Saidapet,
Chennai – 35.

4.The Assistant Director of Co-operative Audit,
O/o. The Assistant Director of Co-operative Audit,
No.12, Kalakasheswarar Street,
Periyakulam,
Theni District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned panel of Senior Co-Operative Auditor fit for promotion to the post of Co-operative Audit Officer published by the 2nd respondent vide his Na.Ka.No. 24413/2016/Po Ni.3 dated 20.12.2016 insofar as non-inclusion of petitioner's name is concerned and the consequential impugned order passed by the 1st respondent in his impugned proceedings in அரசுக் கடித எண். 54403/நிதி(கூத)/2016, dated 23.06.2017 and quash the same as illegal and consequentially to direct the respondents to promote the petitioner as Co-operative Audit Officer w.e.f. the date on which his junior was promoted along with all consequential benefits within the period that may be stipulated by this Court.

For Petitioner	: Mr.H.Mohammed Imran, For M/s.Ajmal Associates.
For R-1	: Mr.Veera Kathiravan, Additional Advocate General, Assisted by, Mr.N.Ramesh Arumugam, Government Advocate.
For R-2 to R-4	: Mr.Isaac Mohanlal, Senior Standing Counsel, For Mr.N.Ramesh Arumugam, Government Advocate.

*****

O R D E R

This Writ Petition is filed challenging the impugned order dated 20.12.2016 insofar as non-inclusion of the petitioner's name is concerned and consequential impugned order passed by the first respondent dated 23.06.2017 and consequently direct the respondents to permit the petitioner as Cooperative Audit Officer with effect from the date of which his junior was promoted with consequential benefits.

2. The petitioner was initially appointed as Junior Co-operative Auditor through TNPSC on 27.01.2010. While working in the said post, after getting prior permission, the petitioner took part in TNPSC examination conducted for appointment to the post of ‘Assistant’. Since the petitioner was selected, he was relieved from Cooperative Audit Department through proceedings dated 28.12.2012 and he joined as Assistant in the Rural Development and Panchayat Raj Department, Theni District on 28.12.2012 itself. After a while, the petitioner intended to go to the parent Department that is the Cooperative Audit Department on the basis of lien and submitted an application. After considering the same, the

petitioner was relieved from the Rural Development and Panchayat Raj Department on 28.02.2014 and he joined the parent Department on the same date as Junior Co-operative Auditor at the fourth respondent office. As per Rule 9-B of the Tamil Nadu State and Subordinate Service Rules, the lien in the parent Department would survive for a period of one year but for the petitioner it is more than one year, hence it ought to be condoned by the Government so as to restore the original seniority. The Government has considered and issued G.O. Ms.No. 864 Finance (Cooperative Audit) Department dated 05.12.2014, thereby condoned the delay. In consequence thereof, the third respondent vide proceedings dated 11.02.2015 restored the petitioner's original seniority. As per the said proceedings dated 11.02.2015, the petitioner's name was included in the panel of Junior Co-operative Auditor fit for promotion to the post of Senior Co-operative Auditor as on 01.10.2012 and placed in the appropriate place. Thereafter, the petitioner was given notional promotion from the date on which his junior was promoted in terms of the order dated 11.02.2015. Subsequently, the second respondent vide proceedings dated 02.03.2015 has given promotion to the post of Senior Co-operative Auditor and in the said promotion order itself, it is categorically stated that the petitioner was promoted notionally, the petitioner's name was included in the panel as on 01.10.2012 and the petitioner's pay was also revised to the effect by virtue of Fundamental Rule 27(17) and his name was also included ahead of his junior namely, K.Venkatraman. While that being so, a panel of Senior Co-operative Auditor fit for promotion to the post of Co-operative Audit Officer as on 01.10.2016 was prepared in which the petitioner's name was not included, but his juniors were included. Though the petitioner's name was placed in the cadre of Senior Co-operative Auditor between serial number 26 and 27 that is between V.SubuLakshmi and K.Venkatraman, the said K.Venkatraman even though being the junior, his name was included in the panel for Senior Co-operative Auditor fit for promotion to the next level of promotion. Aggrieved over the same, the petitioner submitted a representation and the respondents vide proceedings dated 23.06.2017 have rejected the claim of the petitioner by stating that since the petitioner joined in the post of Senior Co-operative Auditor on 02.03.2015, the requirement of 3 years-service in the cadre of Senior Co-operative Auditor as contemplated under the Adhoc Rules was not fulfilled. The contention of the petitioner is that the said reason is factually incorrect in view of the proceedings dated 11.02.2015 which granted notional promotion on par with his junior namely, K.Venkatraman. Therefore, the petitioner is deemed to have been worked from the date of the petitioner's junior's promotion. Had it been considered in terms of the proceedings dated 11.02.2015, the petitioner's name would be included. As per explanation appended to Rule 3-Y of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, contemplates that the service means the period during which a person holds a lien on a post and in the instant case, the petitioner's lien over the post was also restored. Therefore, the petitioner claims that he is entitled to be promoted. Since the impugned order declines, the petitioner has come before this Court by way of filing this Writ Petition.

3. The respondents have filed counter affidavit stating that petitioner was appointed as Junior Co-operative Auditor / Trainee on 27.01.2010 with Seniority No.3 and after completion of his training, he joined the said post on 27.01.2011. As per Rule 9 of the Adhoc Rules issued vide G.O.Ms.No.253, Finance (CA) Department dated 31.03.1986, from the date of his joining that is 27.01.2010, he was placed under probation in the category of Junior Co-operative Auditor for a period of 2 years on duty within the continuous period of three years. Upon fulfilling the conditions only the petitioner would be declared probation period and he would be eligible for next promotion to the post of Senior Cooperative Auditor. The petitioner has completed the probation by fulfilling the conditions and became an 'approved probationer' as on 31.05.2012 in the category of Junior

Co-operative Auditor. The crucial date for preparation of panel for the post of Senior Co-operative Auditor is first day of October every year, since the petitioner completed probation as on 01.10.2012, the petitioner's name was also considered. While the panel was under consideration, the petitioner got selected in the post of Assistant in the another Department on 21.12.2012. Hence, his request dated 26.12.2012 to relief from the Department in order to join another Department was considered vide proceedings dated 27.12.2012 and 28.12.2018 and he was relieved on 28.08.2012 FN and he joined the new Department on 28.12.2012 as Assistant in the office of the District Collector, Theni in the pay band of Rs. 5200-20200+2800 G.P. As per Rule 9-B of the Tamil Nadu State and Subordinate Services Rules, (hereinafter referred as Services Rules) [now Section 14 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred as Act, 2016)}, he has a lien period of one year in the parent department from the date of his relief. While working in Panchayat Department the petitioner opted to revert to parent department on lien indicating he was due for promotion in the Cooperative Department as per seniority vide representation dated 24.07.2013 and the same was considered and accepted by the respondents vide proceedings dated 19.12.2013. The District Collector relieved the petitioner vide proceedings dated 26.02.2014 and the petitioner relieved on 28.02.2014 AN. The petitioner re-joined in parent department as Junior Cooperative Auditor on 28.02.2014 and on the same date submitted petition to include his name in the promotion panel for the post of Senior Cooperative Auditor as per seniority. Since the petitioner was relieved from Cooperative Department on 28.12.2012, his lien period was ended on 27.12.2013 AN and he re-joined the parent department on 28.02.2012, approval was sought from the Government to relax the Rule 9-B of Service Rules (section 14 of Act 2016). The Government considered the same and condoned the delay in G.O.Rt.No.864 Finance (CA) Department dated 05.12.2014 for a period from 27.12.2013 to 28.02.2014. In the meantime the petitioner was considered for the regular panel for the post of Senior Cooperative Auditor for the year 2014 (01.10.2014) and list was issued vide proceedings dated 15.12.2014, then promotion was issued on 21.01.2015, but the petitioner did not join the said post. Then vide proceedings dated 11.02.2015 the petitioner name was placed in the seniority panel of "Cooperative Senior Auditor panel dated 01.02.1012" and in the said proceedings it was also ordered that since Rule 9-B has been relaxed, the GO has been issued and as per his seniority he has fulfilled the conditions laid down in the Adhoc Rules his request has been accepted and as per erstwhile Rule 37 of the Services Rules (now Section 45 of Act, 2016), his name has been included in the 01.10.2012 panel by placing him in between his senior

V.Subbulakshmi (TNPSC Seniority No.36) and his junior K.Venkatraman (TNPSC Seniority No.38) and his pay was also fixed as per F.R.27(17) and his seniority in Senior Cooperative Auditor will be issued separately. Based on the order he was posted as Senior Cooperative Auditor, Periyakulam on 02.03.2015 and he had joined on the same day FN.

4. Regarding the contention of the petitioner when the panel for the post of Co-operative Audit Officer as on 01.10.2016 was prepared, his junior name was included and the petitioner's name was not included, the respondents submitted the post of Co-operative Audit officer is filled by promotion from the category of Senior Cooperative Auditors as per Rule 8(b)(1) of Adhoc Rules, wherein the said Senior Cooperative Auditor, must have (a) passed the Accountant Test for Subordinate Officers Part I and Part II; (b) must have passed the District Office Manual Test; (c) must have put in service for a period of not less than 3 years as Senior Co-operative Auditor. The petitioner joined as Senior Co-operative Auditor only on 02.03.2015, since he has not completed 3 years, his name was not considered for 01.10.2016 panel. But his junior K.Venkatraman has completed 3 years and hence his name was included. Moreover, as per Rule 8(b)(2) of the Adhoc Rules for promotion to the post of Senior Co-operative Auditor, the

conditions prescribed ought to have been complied with. If the said conditions were fulfilled by the concerned Junior Co-operative Auditor, he will be considered for the Senior Co-operative Auditor panel for the year dated 1st October. The following is the petitioner's service particulars from which it would be evident that he has not completed 3 years:

Has joined in the service as Junior Co-operative Auditor on	27.01.2010
Period of probation and completed date of probation on	2 Years. 31.05.2012
Panel date of Senior Co-operative Auditor in which he is eligible on	01.10.2012
Date of relief from this department on	28.12.2012

5. While he was fully qualified to become Senior Co-operative Auditor with Pay Band of Rs.9300-34800+4300 G.P, he left the Department on his free will and joined as Assistant with Pay Band of Rs.5200-20200+2800 G.P in the new Department. When he returned to parent Department, the excess period of lien was condoned by G.O.Rt.No.864 Finance (CA) Department dated 05.12.2014 and was included in Senior Cooperative Auditor as junior as per Rule 37 of the Services Rules (now Section 45 of Act, 2016). But ignoring this, the petitioner requested to include his name in Cooperative Audit Officer panel as on

01.10.2016 in his representation dated 06.10.2016. When similarly placed persons sought to include their names the has clarified vide Government Letter No. 78405/CA/ 2006-2, Finance (CA) Department dated 25.09.2008, wherein it is stated that they should have fulfilled the condition laid down in Rule 8(b) of the Adhoc Rules framed in G.O.Ms.No.253 Finance (CA) Department dated 31.03.1986 and the service rendered in other Departments cannot be taken into account for giving promotion in the Co-operative Audit Department. In the meanwhile, the 01.10.2016 panel for Cooperative Audit Officer was issued vide proceedings dated 20.12.2016 and the petitioner was not considered and noted "not eligible". Aggrieved over the same, the petitioner preferred an Appeal to the Government and the Government rejected the Appeal vide order dated 23.06.2017. The contention of the petitioner is that he was given notional promotion is erroneous, since the order issued in the proceedings dated 11.02.2015 by restoring his seniority can be taken for the post of Senior Co-operative Auditor only. It is submitted that it cannot be construed that he has deemed to have finished 3 years of service in the category of Senior Co-operative Auditor from the date of his joining in 02.03.2015 for the promotion as Co-operative Audit Officer as per the Adhoc Rules of the Department. Moreover, under Section 41(2) of the Act, 2016 promotion can be on merit and ability and seniority can be considered when merit and ability are equal. As per the above Rule, the persons who have merit and ability are approximately equal shall only be considered for next promotion. In the instant case, the merit and ability of the petitioner and his junior are not approximately equal. With regard to averments in paragraph 6 it is submitted that as per explanation to Section 3(y) of the Act 2016, the petitioner is entitled to be considered only to the post of Senior Cooperative Auditor and not to the post of Cooperative Audit Officer. Moreover, the petitioner has served in the lower scale of pay in other Department, whereas his junior was served in higher scale pay in the present Department. If the prayer of the petitioner is considered, it will be opening of flood gates wherein, several similarly placed persons are awaiting in queue and it will become herculean task to both the Department and the Government. Therefore, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.H.Mohammed Imran, for M/s.Ajmal Associates the Learned Counsel appearing for the petitioner, Mr.Veera Kathiravan, Additional Advocate General, assisted by Mr.N.Ramesh Arumugam, Government Advocate appearing for the 1st respondent and Mr.Isaac Mohanlal, Senior Standing Counsel, assisted

by Mr.N.Ramesh Arumugam, Government Advocate appearing for respondents 2 to 4 and perused the records.

7. The contention of the petitioner is that after return to the parent department, the respondents had relaxed Rule 9-B of Service Rules thereby condoned the delay, his lien was restored along with pay fixation and original seniority and promoted to the post of Senior Cooperative Auditor. In such circumstances the respondents cannot deny to consider the petitioner for promotion to the post of Cooperative Audit Officer by citing that the petitioner had not served in the post of Senior Cooperative Officer for the period of three years. However the contention of the respondents is that the provision states that the candidate ought to have served for three years in the said post which is one of the qualifications prescribed for the promotion to the post of Cooperative Audit Officer. In order to consider the rival contentions the Court proceeds to consider the relevant provisions along with service records of the petitioner.

8. It is an admitted fact that during the period of probation the petitioner had acquired the qualification prescribed under Rule 9 of the Adhoc Rules. The said rule prescribes the following qualification:

i) A course of instruction in Cooperation, Auditing, Banking and Book-keeping for a period of nine months, a course of practical training for a period of three months at a Co-operative Training Institute in Tamil Nadu
(Rule 10);
ii) pass the examination in Cooperation, Auditing, Banking and Book-keeping conducted by the Central Co-operative Institute, Madras or the Tamil Nadu Public Service Commission (Rule 11);
iii) pass the Account Test for Subordinate Officers Part-I (Rule 11);
iv) pass the District Office Manual Test (Rule 11).

It is pertinent to note that the petitioner had acquired the said qualification prior to shifting to Panchayat Department.

9. As per Rule 8(b)(2) of the Adhoc Rules for promotion to the post of Senior Cooperative Auditor, the following conditions ought to be complied with:

(i)must have passed the Accountant Test for Subordinate Officers, Part- I;
(ii) must have passed the District Office Manual Test;
(iii) ***must have put in service for a period of not less than one year as Junior Co-operative Auditor****, and,*

(iv) must have passed the examination in Co-operation, Auditing, Book-keeping and Banking conducted by the Central Institute or the Tamil Nadu Public Service Commission.

In the present case the petitioner had acquired the said qualification and he was fully qualified to become Senior Cooperative Auditor with Pay Band of Rs. 9300-34800+4300 Grade Pay. But he had left the Cooperative Department and joined the Panchayat Department as Assistant in the Pay Band of Rs. 5200-20200+2800 Grade Pay.

10. When the petitioner returned to the parent department the lien in the parent department ended on 27.12.2013, but the petitioner rejoined the parent department on 28.02.2014, hence the period from 27.12.2013 to 28.02.2014 was condoned and the Rule 9-B of Service Rules (Section 14 of Act 2016) was relaxed. The panel for Senior Cooperative Auditor was on 01.10.2012 but the petitioner left the department on 28.12.2012, thereafter rejoined on 28.02.2014. Thereafter the petitioner was promoted as Senior Cooperative Auditor only on 02.03.2015. Hence, the petitioner had not served as Senior Cooperative Auditor for the period from 28.12.2012 to 01.03.2015. When the panel for Cooperative Audit Officer was considered on 01.10.2016 the petitioner had hardly served for

one year six months only. But when the petitioner returned back to the parent department after one year, the lien beyond one year was granted by relaxing Rule 9-B and condoned the said period. Therefore the claim of the petitioner was that the petitioner was deemed to have served in the post of Senior Co-operative Auditor. But the submission of the respondent is that the petitioner ought to have actually served in the said post for the period of not less than three years.

11. Similar conditions are prescribed under Rule 8(b)(1) of the Adhoc Rules for the post of **"Cooperative Audit Officer",** wherein it states **the Senior Cooperative Auditor** must have

(a) passed the Accountant Test for Subordinate Officers Part I and Part II;

(b) must have passed the District Office Manual Test;

(c) ***must have put in service for a period of not less than 3 years as Senior Cooperative Auditor***

12. Rule 8(b)(2) of the Adhoc Rules (the rule is extracted supra), prescribe the conditions for the post of "**Senior Cooperative Auditor"** wherein it states **the Junior Cooperative Auditor**

(iii) must have put in service for a period of not less than one year as Junior Co-operative Auditor,

In the both the cases the phrase that is used is **"must have put in service for not less than one year / three years as".** In the case of promotion to Senior Cooperative Auditor for a period of not less than one year as the Junior Co-operative Auditor and in the case of promotion to Cooperative Audit Officer for a period of not less than three years as Senior Cooperative Auditor. Hence the phrase **"must have put in service not less than one year / three years as"** ought to be interpreted.

13. The Learned Senior Counsel appearing for the respondents relied on the Judgment rendered by Delhi High Court in the case of *K.B.Rajoria Vs Union of India and others.* The issue considered in the said judgment is "what does 'regular service in a cadre' stands for?. Does it amount to qualifying service or amounts to experience in the service? Can fixing of notional pay or for that matter notional promotion count as 'regular service?" The High Court proceeded to interpret "two years regular service" and consider whether the notional promotion period can be taken to determine the said two years as eligible period. The High Court held that

the writ petitioner K.B.Rajoria was not entitled to promotion and dismissed his claim. Further held that the 4th respondent Krishnamoorthi also not eligible as on the date of 1st July 1997 and directed to consider all eligible persons.

14. However, the Learned Counsel appearing for the petitioner submitted that against the Judgment of Delhi High Court, the Union of India has preferred an Appeal in *Civil Appeal No.2272 of 2000* and the Delhi High Court Judgment was set aside which is reported in *2000 (3) SCC 562*, wherein the Hon'ble Supreme Court has set aside the order of the Delhi High Court insofar as the finding against Krishnamoorthi is concerned since the K.B.Rajoria given a concession before Tribunal that he had not challenged the promotion granted to the said Krishnamoorthi, but the High Court had overlooked the same. The Hon’ble Supreme Court further held that “the case of K.B.Rajoria was on hypothetical situations and his case cannot be equated with that of Krishnamoorthi. The High Court erred in construing the words regular service as actual physical service, if that were so then an Adhoc appointee would claim to be qualified. The word "regular" does not mean actual. The notional promotion granted to Krishnamoorthi cannot be construed as irregular”. The Supreme Court has also considered the word 'service' in the light of relevant rules and the Office

Memorandum dated 10.06.1998 and in terms of which notional promotion was granted to Krishnamoorthi. And the relevant provision 18.04.3 was considered. The relevant portion of the judgment is extracted hereunder:

> *"16. Analysed these instructions provide:*
>
> *(i).For the immediate promotion of a person who has been superseded.*
> *(ii)Upon such promotion his pay should be fixed at the stage at which it would have reached had he been promoted from the date that the junior officer was promoted.*
> *(iii) The seniority of such notionally promoted officer would be determined according to the select list prepared by the DPC if a minimum period is prescribed.*
> *(iv) For the further promotion of such notionally promoted officer, his eligibility would be calculated as including the period from which the junior officer was promoted.*
>
> *17. Krishnamoorti was admittedly superseded by Shri S.R. Goyal, a junior officer on 22nd February, 1995, when S.R. Goyal was promoted to the post of Additional Director General (Works). In terms of the provisions of para 18.4.3, Krishnamoorti was entitled to count the period from 22.2.95 as the period of qualifying service for the purpose of further promotion to the post of Director General.*
>
> *18.The distinction drawn by the High Court between the word service used in the eligibility criteria in this case and the words qualifying service in para 18.4.3 is specious. The Notes to the eligibility criteria as set out in the said schedule fortify this view. Notes 1 and 2 to the said schedule clarify the position with regard to the calculation of two years regular service in the grade.*
>
> *(1) The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grades/posts.*
>
> *(2) If a junior with the requisite years of service is considered, the senior will also be considered notwithstanding the fact that he does not possess the requisite years of service. (Emphasis added)*

19. Note 1 leaves no room for doubt that the word service means qualifying service, and Note 2 makes it clear that in case of supersession actual service for the prescribed period is not required. This is in keeping with para 18.4.3 of the O.M. quoted earlier. As the notional date of promotion of Krishnamoorti was 22.2.95 he was eligible to be considered for the post of Director General in 1999.

20. In the context of this case, the High Court erred in equating the words regular service with actual experience relying on the decision in Union of India and others Vs. V.M.Bhaskar and others 1996 (4) SCC 416. In that case the eligibility criteria expressly was of completion of 2 years-experience in Grade II. The case is therefore entirely distinguishable.

21.The notional promotion was given to Krishnamoorti to right the wrong that had been done to him by his supersession on 22nd February, 1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such notional promotion, particularly when the relevant provisions so provide, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done.

22. We, therefore, allow the appeal and set aside the impugned order of the High Court, in so far as the finding regarding Krishnamoorti was concerned. There will be no order as to costs.

15. The Delhi High Court has relied on the judgment rendered in the case of *Union of India and others Vs M.Bhaskar and others* reported in *JT 1996 (5) SCC 501* and the Hon'ble Supreme Court had held the said judgment is distinguishable. The relevant portion of the said judgment in M.Bhaskar's case is extracted hereunder:

"14. In this appeal, a separate argument was advanced on behalf of respondent no. 1, Prakash Chandra Ojha, who has approached the Patna Bench of the CAT with the grievance that he was unjustly and illegally denied promotion to Grade-I Commercial Inspector in 1990, despite his having been promoted as Commercial

Inspector Grade-II by an order dated 21.9.1989, which was made effective from 11.10.1988, because of which he had become eligible for promotion to Grade-I on 11.10.1990, as the eligibility condition was completion of 2 years of experience in Grade-II. The Patna Bench held that the exclusion of this respondent from the list of eligible candidates for the selection meant for 1990 was wrong.

15. The aforesaid decision has been challenged in this appeal by the Union of India by contending that 2 years' period of experience has to be reckoned, not from 11.10.1988, but from 21.9.1989. There is no dispute that the eligibility condition is 2 years-experience in Grade-II. Now, this respondent having really started working in Grade-II pursuant to the order of 21.9.1989, he could not have gained experience prior to the date he had joined pursuant to this order. The mere fact that his promotion in Grade- II was notionally made effective from 11.10.1988 cannot be taken to mean that he started gaining experience from that day, because to gain experience one has to work. Notional promotions are given to take care of some injustice, inter alia, because some junior has come to be promoted earlier. But we entertain no doubt that the person promoted to higher grade cannot gain experience from the date of the notional promotion; it has to be from the date of too actual promotion.

16. We, therefore, hold that the view taken by the Patna Bench qua this respondent is not sustainable.

16. The said K.B.Rajoria case was considered as per the Central Public Works Department Recruitment Rules, 1986 and amended Rules 1990 and the clause 18.4.3 of guidelines and instructions issued by the Government of India in Office Memorandum 10.06.1998. The said case was considered since the 4th respondent therein Krinshnamoorthi was a senior, but was superseded while granting promotion to one Mr.S.R.Goyal, a junior. But K.B.Rajoria was not superseded at all. Moreover the Hon’ble Supreme Court has only set aside the Delhi High Court judgement to the extent where it has held against

Krishnamoorthi alone. Both the Courts have held the notional promotion would be granted only to set aside the wrong done to a senior, whereby the junior would be promoted bypassing the senior. Therefore the Courts were dealing with the such notional promotion granted "to set right the wrong done to a senior". Moreover the Note 1 and 2 of the Service Rules referred in the K.B.Rajoria's case clearly permits to calculate the notional promotion period also while calculating the period of service. The said Note 1 and 2 is extracted hereunder:

> *Note 1: The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grades/posts*
> *Note 2: If a junior with the requisite years of service is considered, the senior will also be considered notwithstanding the fact that he does not possess the requisite years of service.*

Especially when Note 2 states the senior may also be considered even though the senior is not possessing the requisite years of service.

17. Further the Hon'ble Supreme Court in Rajoria's case has distinguished the word "experience" and "service" by taking into the fact that the Adhoc promotees would claim they had gained experience and claim actual promotion. In order to avoid such situation the Hon'ble Supreme Court had held that regular service would mean service alone and not experience.

18. In the present case the Adhoc Rules prescribes "qualification" under Rule 8 (a) that no person shall be appointed if he has completed or will compete 30 years of age on the first day of July of the year in which the selection for appointment is made. Under Rule 8 (b) "other qualification", wherein it states **"No person shall be eligible for appointment** specified in Column 1 of the Table below by the methods of specified in the correspondent entries in column 2 **unless he possesses the qualifications specified** in the corresponding entries in column 3 thereof". One of the qualifications is ***"must have put in service for a period of not less than 3 years as Senior Cooperative Auditor".*** This phrase cannot be equated with the phrase ***"regular service"*** dealt in K.B.Rajoria's case. Hence the judgment rendered by Hon'ble Supreme Court in K.B.Rajoria's case is not applicable to the present facts of the case. Further the said ***"must have put in service for a period of not less than 3 years as Senior Cooperative Auditor"*** ought to be read along with ***"No person shall be eligible for appointment and unless he possesses the qualifications specified"*** stated in Rule 8(b). In short,

> ***"No person shall be eligible for appointment unless he possesses the qualifications"***
>
> ***"must have put in service for a period of not less than 3 years as Senior Cooperative Auditor"***

would definitely mean that the candidate ought to acquire the experience and it is simple service. Especially when the provision states "no eligibility unless possesses the qualifications" at all, then the petitioner cannot come within the zone of consideration at all. The phrase "not put in service for not less than three years" would mean at least minimum three years-experience. In fact the government had used all negative phrases so that it does not create any doubt whether it is service or experience and it is experience only. Further in the present case there is no overlooking of promotion to the petitioner, but it is the situation created by the petitioner by shifting from one department to another and again reverted back to parent department in order to climb the later of promotion quickly. Further during the said period from 28.12.2012 to 01.03.2015 the petitioner was serving as Assistant in the Panchayat Department and had not gained any experience in the post of Senior Cooperative Auditor. The post of Senior Cooperative Auditor cannot be equated with the post of Assistant, since the Senior Cooperative Auditor is a specialised post than the post of Assistant.

19. If the petitioner's plea is accepted then the persons who have put in service and gained experience are waiting in the line for all these years would be

prejudiced. Therefore, this Court is not inclined to entertain the said plea. Further in the present case, the petitioner's notional fixation of pay and seniority is subject to the provisions of Adhoc Rules. When the Adhoc Rules categorically states that the candidate ought to put in service in order to come within the zone of consideration, then the petitioner cannot rely on the notional fixation of pay and seniority, which is subject to the provisions of law. The Learned Senior Counsels appearing for the respondents submitted that the plea of the petitioner is opening flood gate for petitions.

20. In view of the above, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.07.2024

Index : Yes / No
Internet : Yes
Nsr

To:

1.The Additional Chief Secretary to Government,
The State of Tamil Nadu,
Finance Department,
Secretariat,
Chennai – 9.

2.The Director of Co-operative Audit,
O/o. the Director of Co-operative Audit,
Saidapet,
Chennai – 35.

3.The Joint Director of Co-operative Audit (Head Quarters),
O/o. the Joint Director of Co-operative Audit,
Saidapet,
Chennai – 35.

4.The Assistant Director of Co-operative Audit,
O/o. The Assistant Director of Co-operative Audit,
No.12, Kalakasheswarar Street,
Periyakulam,
Theni District.

S.SRIMATHY, J

Nsr

Pre-delivery Order made in
W.P.(MD).No.18707 of 2017

29.07.2024