BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.1964 of 2019

S.Velammal ... Petitioner

Vs.

The Joint Secretary to Government/
Director of Co-Operative Audit,
571, Anna Salai, Chennai-35. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in Na.Ka.No. 3265/2014/பொ.நி.1 dated 13.07.2018 and to quash the same and consequently direct the respondent to sanction and disburse the salary for the promotional post of Co-operative Audit Officer from 12.08.2015 to 31.03.2014 along with interest @ 12% p.a. within the period that may be fixed by this Court.

For Petitioner : Mr.V.Kannan

For Respondent : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.

ORDER

This writ petition has been filed seeking orders to quash the proceedings of the first respondent in Na.Ka.No.3265/2014/பொ.நி.1 dated 13.07.2018 and to direct the respondent to sanction and disburse the salary for the promotional post of Co-operative Audit Officer from 12.08.2015 to 31.03.2014 along with interest @ 12% p.a. within a time frame.

2.It is stated in the affidavit that the petitioner was appointed as Typist in Co-operative Audit Department on 06.11.1981. She was promoted and posted to the post of Junior Inspector of Co-Operative Socities on 28.04.1989. Thereafter, she was promoted to the post of Senior Inspector of Co-operative Societies on 13.08.1993 and posted in the office of the Deputy Registrar of Co-operative Societies, Tirunelveli and then, transferred and posted in the office of the Assistant Director of Co-operative Audit Tirunelveli. While she was working there, she was falsely implicated along with her husband in a criminal case registered in Cr.No.6 of 2002 on the file of the Economic Offences Wing-II, Tirunelveli for the offences punishable under Sections 3 r/w 4 and Section 5(c) and Section 420 IPC. The Assistant Director of

Co-operative Audit, Tirunelveli issued a charge memo dated 01.12.2006 under Rule 17(B) of the Tamilnadu Civil Services (Discipline & Appeal) Rules. The Assistant Director of Co-operative Audit, Tirunelveli was appointed as Enquiry Officer and conducted enquiry. An enquiry report was submitted wherein it has been stated that the charges against the petitioner were not proved. But re-enquiry was ordered without any justifiable reasons. The report of the said enquiry was submitted and she was directed to submit explanation on 13.04.2005. She had submitted her explanation on 02.05.2005.

3.The panel of Senior Co-operative Auditor eligible for promotion to the post of Co-operative Audit Officer dated 24.06.2004 was published and the petitioner's name was found place in the list of unfit candidates. She made a representation dated 12.12.2006 to add her name, however, the same was rejected by the proceedings of the third respondent dated 03.04.2007. Challenging the said proceedings, she had preferred a writ petition in W.P.(MD)No.2606 of 2008. This Court by its order dated 02.04.2008 was pleased to direct the Assistant Director of Co-operative Audit, Tirunelveli to pass final orders in pursuance to the charges levelled against her, within two months. The Assistant Director of Co-operative Audit, Tirunelveli passed an order dated 20.06.2008 saying that since the enquiry officer found that there is no evidence to prove the charges and the criminal case pending as C.C.No.4 of 2003 before the learned Judicial Magistrate, Tirunelveli, was ended in acquittal in and by its judgment dated 26.03.2014. She was allowed to retire on attaining the age of superannuation with effect from 31.03.2014 by the proceedings dated 28.03.2014. She submitted a representation dated 01.04.2014 requesting to place her name in the appropriate place in the panel of Senior Co-operative Auditor eligible for promotion to the post of Co-operative Audit Officer dated 24.06.2004 and proceedings for promotion dated 01.10.2004. The Assistant Direcotr of Co-operative Audit, Tirunelveli had sent a proposal dated 20.07.2015 recommending her promotion with effect from 01.10.2004. Accepting the same, the Joint Director of Co-operative Audit Chennai, vide proceedings dated 01.09.2015 ordered to place her name above the name of her junior one Mr.R.Ramakrishnan in the said promotion list dated 01.10.2004. She made repeated representations dated 20.05.2017 and 03.11.2017 requesting to disburse the arrears of pay and other monetary benefits considering the fact that she has been promoted to the post of Co-operative Audit Officer with retrospective effect from 01.10.2004.

There was no response and she was constrained to file a writ petition in W.P.(MD)No.6132 of 2018 and this Court vide order dated 22.03.2018 directed the respondents to consider her representations. The respondent vide proceedings dated 13.07.2018 rejected her *bonafide* claim to settle the arrears of salary and other monetary benefits, by stating that she would be entitled to notional pay fixation only as per Rule 27(17) of Fundamental Rules and benefits only will be disbursed on the basis of notional re-fixation. Hence, the writ petition.

4.The learned counsel appearing on behalf of the petitioner would submit that the normal Rule ie., "No Work, No Pay" is not applicable. Once the charges has not been proved and the petitioner has been relieved from Disciplinary proceedings, she has been entitled for legitimate pay and allowances, as per the Fundamental Rules. He would further submit that a Government Order is passed with retrospective effect, expressly stating that it will be effective from a particular date, it is incumbent on the authority to give same effect and whatever the benefits arising out of it, should also be looked from the date only, including the claim in respect of the fixation of seniority, fixation of pay and claim for arrears and other service benefits.

5.Per contra, the learned Additional Government Pleader appearing on behalf of the respondent would submit that the petitioner was not denied any promotion. In fact, the petitioner's name was not included in the panel along with other eligible persons, since there was a criminal case pending against the petitioner, in consequence, a disciplinary proceedings has also been initiated against the petitioner. He would further submit that overlook of promotion was entirely due to the activities of the petitioner and the respondent has acted only as per the Service Rules applicable to the petitioner.

6.I have considered the submissions made on either side and perused the materials available in the record.

7.It is seen from the records that while the petitioner was working in in the post of Senior Inspector of Co-operative Societies in the office of the Assistant Director of Co-operative Audit, Tirunelveli, a criminal case was filed against the petitioner along with her husband, in Cr.No.6 of 2002 dated 21.12.2002 on the file of the Economic Offences Wing-II, Tirunelveli. On receipt of the details of the criminal case against the petitioner, the Assistant Director of Co-operative Audit Tirunelveli, initiated disciplinary proceedings under Rule 17(B) of the Tamilnadu Civil Services (Discipline & Appeal) Rules in Rc.No.2445/2003 dated 01.12.2003. After conducting enquiry, the Enquiry Officer submitted his enquiry report on 20.05.2004 wherein the enquiry officer has stated that since the criminal case is pending with the Court, whether the petitioner was guilty or not will only be proved after the judgment of the Court. Thereafter, the enquiry officer has submitted a fresh report dated 22.11.2014.

8.It is pertinent to mention that when the panel for the post of Co-operative Audit Officer for the year 2004-05, with a crucial date as on 01.10.2004, was prepared, the name of the petitioner was not considered, since criminal case and disciplinary proceedings under Rule 17(B) were pending. Aggrieved by this petitioner had submitted a representation dated 12.12.2006 and her request was rejected. The petitioner has moved a writ petition in W.P.(MD)No.2606 of 2008 before this Court as against the order of the respondent dated 03.04.2007. This Court passed an order, in which it is stated that by taking into consideration the said submission made by the learned Additional Government Pleader, the second respondent is directed to pass the final orders in pursuant to the charges that have been levelled against the petitioner, within two months from the date of receipt of the said order.

9.It is also seen from the records that the petitioner was permitted to retire from the service on superannuation on 31.03.2014 as per the proceedings of the Joint Director of Co-Operative Audit (Head Quarters), Chennai in RC.No.4 of 2014 dated 28.03.2014. The pension proposals of the petitioner was sent to the Accountant General, Chennai, based on the pay last drawn in the category of Senior Cooperative Auditor and retirement benefits have been admitted by the Accountant General as per his authorization letter dated 16.09.2014. It is pertinent to mention that on the next day of superannuation, ie., 01.04.2014, the petitioner has requested to grant selection grade in the post of Senior Co-operative Auditor with effect from 13.09.2003 and also requested to include her name in the panel for the post Co-operative Audit Officer as on 01.10.2004 and appoint her as Co-operative Audit Officer on promotion. It was ordered that the pay of the petitioner in the post of Co-operative Audit Officer shall be fixed on par with her junior as per Rule 27(17) of the Fundamental Rules of the Tamil Nadu Government, vide proceedings of the Director of Co-operative Audit Officer, Chennai dated 01.09.2015. Accordingly, the pay of the petitioner was fixed at Rs.6,525/- in the time scale of pay of Rs.5500-175-9000 with effect from 13.09.2003 onwards and it was ordered that the petitioner is eligible for arrears amount with effect from 13.09.2003. Similarly the petitioner has been appointed in the post of Co-operative Audit Officer with effect from 12.08.2005 and pay has been fixed at Rs.7,700/- in the time scale of pay of Rs.5,900-200-9,900 on par with her immediate junior and since the petitioner has not acted in the post of Co-operative Audit Officer, pay and increments of the petitioner for the post of Co-operative Audit Officer was fixed notionally as per Rule 27(17) of the Fundamental Rules, as per proceedings of the Assistant Director of Co-operative Audit, Tirunelveli, dated 18.12.2015.

10.As per Rule 27(17) of the Fundamental Rules, the pay of the petitioner was fixed notionally as that of immediate junior to the petitioner. Since the petitioner has not acted in the post but considered to be given deemed promotion, the petitioner cannot claim monetary benefits for the post in which, she has not performed her official duties. The petitioner is now receiving pension which is equal and is entitled on a regular basis consequent on her inclusion in the regular panel and promoted along with her junior. Therefore, the order impugned passed by the respondent does not warrant any interference. The contention of the petitioner that Rule 27(17) of the Fundamental Rules cannot be applied to the case of petitioner is not correct, since non-promotion of the petitioner for the panel year 2004 was only due to the pendency of criminal case and later the criminal case was ended in acquittal, the salary ought to have been paid to the non-promotion period, was untenable. There is no merits in this writ petition and the same is liable to be dismissed.

11.In the result, this writ petition is dismissed. No costs.

07.02.2025

NCC : Yes / No
Index : Yes / No
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To

The Joint Secretary to Government/
Director of Co-Operative Audit,
571, Anna Salai, Chennai-35.

M.JOTHIRAMAN, J.

gns

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