

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V. KANAGARAJ

W.P.No.45612 of 2002

S.Mathias .. Petitioner

-Vs-

1. The State of Tamilnadu rep.
by its Secretary
Dept. of Cooperative,
Chennai-9.

2. The Registrar of
Cooperative Societies,
Chennai.

3. The Special Officer,
Pudukkottai Cooperative Town
Bank Ltd.,
Pudukkottai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying
for the relief as stated therein.

For Petitioner : Mr.J.Thilagaraj

For Respondents : Mr.R.Lakshminarayan, AGP (W)
for R1 & R2.
Mr.S.V.Duraisolaimalai for R3

:O R D E R

This writ Petition has been filed praying to issue a Writ of Mandamus directing the respondents to approve the promotion of the petitioner from senior Assistant to the Assistant Manager that he was given as per Resolution No.824/99-2000, dated 30.10.1999 of the Administrative Board, Pudukkottai Cooperative Town Bank Limited and to forthwith resume paying the petitioner the salary of Assistant Manager at the scale of Rs.1700-100-2100 (that was paid to the petitioner from the month of November 1999 to April 2001) along with arrears accrued from the month of May 2001 to the date of payment.

2. The case of the petitioner is that he joined the third respondent Bank in the year 1980 as Clerk and as per the above said resolution, he was promoted from the post of Senior Assistant to the Assistant Manager and his

pay was also fixed. Thereafter, after the general elections in May, 2001, there was a change in the incumbency and the Special Officer appointed orally informed the petitioner that he was not accepting the promotion and also refused to pay the salary in the promotional post and as against the threat of demotion, he along with two other affected persons filed a suit in O.S.No.178/2001 before the Court of District Munsif, Pudukottai and the same was decreed on 18.10.2001 thereby granting permanent injunction against the Special Officer that the petitioner shall not be demoted and also directed to pay the revised salary of Assistant Manager. But, the same was not paid and hence the writ petition.

3. In the counter affidavit filed on behalf of the third respondent, besides generally denying the allegations of the writ petition, this respondent would also specifically state that during the period from 1995-1996 to 2000-2001 it could not make any profit and incurred heavy loss to the tune of Rs.10.26 lakhs as on 31.3.2001 and the nonperforming asset is above 20% as against 10%; that under Section 22 of the Banking Regulation Act, 1949, the Reserve Bank of India listed 14 urban Banks as 'weak' and issued notice to stop the banking business and go out of the purview of the Banking Regulation Act, 1949; that in these circumstances, the Special Officer of the Bank was forced to take necessary steps to improve the financial condition of the third respondent bank for getting licence from the Reserve Bank of India and Registrar of the Cooperative Societies also recommended the proposal to the Reserve Bank of India for getting permission to continue the banking business under the Banking Regulation Act upto 31.3.2003.

4. This respondent would further submit that the third respondent bank was originally managed by the elected body from October 1996 to May 2001; that at that time, the President and the Board decided to give promotion to some employees of the bank as per the proceedings of the Joint Registrar vide Rc.No.6628/93/A3/dated 23.6.1995; that the Managing Director who is a Government servant appointed by the Joint Registrar of Cooperative Societies opposed to give promotion because the revised cadre strength was fixed on the basis of the report of the Streamline Committee resulting in passing of the G.O.Ms.No.111, Cooperative, Food and Consumer Protection Department dated 19.5.1999, but the Board of Directors overlooking the G.O. gave promotion to the employees on the basis of the old cadre strength which was fixed by the Joint Registrar of Cooperative Societies on 23.6.1995, thus failing and neglecting to follow the G.O. and giving illegal promotion vide resolution No.824/1999-00 dated 30.10.1999; that while the promotion was alleged to have been given on the basis of the Joint Registrar of Cooperative Societies Proceedings in RC.No.6628/93/A3/ dated 23.6 .1995, the President of the Board failed and neglected to get prior approval from the Joint Registrar of Cooperative Societies, which is a condition precedent for any appointment or promotion which was overlooked by the Board and therefore the promotion given to the petitioner was illegal and against the statute; that Consequently, the Deputy Registrar of Cooperative Societies has directed the President of the third respondent Bank to cancel the illegal promotion immediately and send the proposal with financial statement for consideration, but, the President did not cancel the promotion and decided to give new salary to the employees without any resolution by the Board and prior permission of the Joint

Registrar of Cooperative Societies and individually passed the pay bill which could only be passed by the Managing Director; that since the bank was already facing financial crisis incurring loss to the tune of Rs.10.26 lakhs during 2000-2001, the promotion given was in total violation of the Rule 149 of the Cooperative Societies Rules and therefore on inspection of the bank the Inspecting Officer directed the third respondent to recover the excess salary, since there was violation in fixation of pay. On such grounds, the third respondent would pray this court to dismiss the above writ petition as devoid of merits.

5. During arguments, the learned counsel for the petitioner would submit that the petitioner has maintained an unblemished record all through his service and he was eligible for promotion by all means; that the petitioner's promotion was within the cadre strength as approved by the Joint Registrar; that the petitioner was promoted as Assistant Manager in November 2001, but he was ordered to execute the job of a Manager; that in the month of May 2001, i.e. after a long period of 20 months, the petitioner was reverted to the post of Assistant by an oral order of the Special Officer; that the petitioner was not given any opportunity to be heard before his reversion and this is a flagrant departure from the principles of natural justice; that though the petitioner was reverted to the post of Assistant, he is still continuing to execute the job of a Manager, i.e. he is carrying out the job of Manager for the past five years, but he is being paid the salary of an Assistant; that ironically, even the promotional monetary benefits, that were paid to the petitioner from November 1999 to May 2001, were recovered from him after filing this writ petition; that the bank is in a very flourishing position as could be seen from the letter of the Special officer dated 09.01.2002; that it is against all canons of natural justice to promote the petitioner and extract the work of a Manager from him on one hand, and to pay him the old salary of a Senior Assistant on the other hand after having paid him the salary of Assistant Manager from November 1999 to May 2001.

6. The learned counsel would also cite the following two judgments:

(1) 1999 (9) Supreme 514(M.C.Misra v. Union of India)

(2) 2000(2) ALT 201 (Y.Prakasham v. Dy.Inspector General of Registration and Stamps, Visakhapatnam)

In the first judgment cited above, the petitioner therein prayed for the arrears of salary for the post of Deputy Conservator of Forest from a particular date on which he was promoted on adhoc basis and the Honourable Apex Court has ordered in the following manner:

".... Inasmuch as the petitioner has been promoted under the relevant rules and that aspect is not in dispute before us, we direct the respondents to make the payment of arrears of salary as are admissible under the law from the date he was promoted on ad hoc basis after making adjustments of the payments that have already been made to him. The petition is allowed accordingly."

7. The second judgment cited above is a Division Bench Judgment of the Andhra Pradesh High Court in a case wherein the petitioners sought to set aside a proceeding and to direct the respondents therein to continue the petitioners as Sub-Registrar, Grade II, with all benefits to which post he was

promoted and finding that the order of reversion of the petitioners from the post of Sub Registrar, Grade-II was in clear violation of the principles of natural justice and the rules prescribed under the State and Subordinate Service Rules on facts, the Division Bench has held that 'the Andhra Pradesh Administrative Tribunal has failed to decide the matter on merits, but disposed of the matter on the basis of the oral representations made by the Government Pleader' and would ultimately allow the writ petition holding that the petitioners therein are entitled to continue in the post of SubRegistrar, Grade II.

8. On the part of the learned counsel appearing on behalf of the respondents, he would sail along with the contentions of the counter affidavit, which are extracted herebefore, without any new fact or circumstance or law being brought forth and therefore tracing the same would only result in repetition of the facts already traced.

9. The petitioner's grievance is that he was promoted from the post of the Senior Assistant to that of the Assistant Manager with fixation of his pay and thereafter the respondents have not accepted the promotion and refused to pay the salary in the promotional post; that joining hands with two others, who are similarly placed, he filed a suit and a decree was obtained granting permanent injunction against the Special Officer to the effect that the petitioner could not be demoted by the Special Officer and hence the writ petitioner prays for the relief extracted supra.

10. On the contrary, in the counter affidavit vividly filed on the part of the third respondent Bank, it comes to be seen that the third respondent was in deep financial crisis and as against the conditions prevalent and the rules and regulations governing the conduct and management of such Cooperative Banks, the promotion was arbitrarily and the same could not either be approved under any law or rule nor such a promotion could be granted in the facts and circumstances of the case and the same was illegally perpetrated on the part of the President of the Society and therefore there is no locus standi for such promotion. It is further argued on the part of the third respondent that in adherence to the requirements of the Reserve Bank of India and as per its dictates and in accordance with the Rule 149 of the Cooperative Societies Rules, such promotions are arbitrary and therefore the same was cancelled rightly in adherence to the rules on inspection made by the authorities concerned and on such grounds it would be pleaded very strongly on the part of the third respondent to dismiss the above writ petition.

11. It is glaringly seen that the promotion of the petitioner has been effected not falling in line with the governing rules and the situation and various adverse conditions under which the third respondent bank is run and with scant regard for the law and rules and therefore the authorities concerned having come to understand that the promotions were illegally effected absolutely without adherence to the law governing the same and in the conditions prevalent at the time of making such promotions particularly unmindful of the decaying financial position of the bank, the same were ultimately cancelled. Therefore, since the very promotion itself was made not in adherence to the rules or law, the petitioner cannot seek the protection of law.

12. Since the cancellation of the promotion of the petitioner has

been done for the welfare of the society and its employees as a whole and to protect the interest of the beneficiaries of such banks, such of the acts done on the part of the respondents cannot be questioned particularly since the Cooperative Movement is aimed at achieving real justice in interior villages of the country and therefore any scandalous and careless approach made on the part of any authority, such powers could not be approved by any law and one such act perpetrated on the part of the President of the bank being promotion of the petitioner, the same has been annulled in accordance with law and therefore the petitioner becomes disentitled to seek the relief sought for in the writ petition.

13. The judgments cited above on the part of the petitioner are not in consonance with the facts of this case in the sense that in both the cases relied on by the petitioner, extracted supra, either the promotions or the appointments were legally made in accordance with law and therefore the acts done on the part of the authorities as against such promotion or appointment has been put down giving relief to the individual petitioners, which is not the case in hand and therefore the principles laid down by the Apex Court and the Division Bench of the Andhra Pradesh High Court cannot be applied to the facts and circumstances of the present case in hand and hence the following order.

In result, the above writ petition does not merit acceptance and becomes liable only to be dismissed and is dismissed accordingly. However, there shall be no order as to costs.

29.10.2004

Index:Yes

Internet: Yes

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Copy to:

1. The Secretary,
State of Tamilnadu,
Dept. of Cooperative,
Chennai-9.

2. The Registrar of
-Cooperative Societies,
Chennai.

3. The Special Officer,
Pudukkottai Cooperative Town
-Bank Ltd.,
Pudukkottai.

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