

(2011) 06 MAD CK 0310

Madras High Court

Case No: Writ Petition No. 17602 of 2010 and M.P. No. 1 of 2010

AG Chandrasekar

APPELLANT

Vs

The Secretary to Government
Co-operation and The Registrar
of Co-operative Societies

RESPONDENT

Date of Decision: June 21, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16(1)

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: S.M. Subramaniam, for the Appellant; Lita Srinivasan, Government Advocate,
for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J

1. As a result of the Respondent indicating finger of accusation against the Petitioner, when he was serving as Deputy Registrar / Secretary to Tamil Nadu Co-operative Marketing Federation Ltd. in respect of certain irregularities found in the matter of cashew nut purchase, though several Special Officers and other Officials of the Tamil Nadu Co-operative Marketing Federation Ltd. were placed under suspension, the Petitioner was not placed under suspension, since there was no direct or indirect participation, however, he was issued with a Charge memo under Rule 17(b) in proceedings dated 07.04.1997 as he was a signatory under the bye-laws. Resultantly, his name was deferred in the panel of the year 1996-97 for promotion to the post of Joint Registrar of Co-operative Societies in Proceedings dated 17.04.1997.

2. With this background, the learned Counsel appearing for the Petitioner submitted that the Special Officer of the Tamil Nadu Co-operative Marketing Federation Ltd. submitted his report on 22.05.1997, indicating the role of the Petitioner as a Secretary of Tamil Nadu Co-operative Marketing Federation Ltd., in the matter of alleged cashew nut transactions. In the mean while, the Petitioner also filed O.A. No. 9766 of 1999 before the Tamil Nadu Administrative Tribunal, seeking for a direction to the Respondents to complete the enquiry as expeditiously as possible. The Tribunal, by an order dated 23.07.1999, directed the Respondents to complete the enquiry within a period of six months and further to promote him to the post of Joint Registrar of Co-operative Societies. Thereafter, a criminal case was also registered in C.C. No. 1 of 2000 on 06.03.2000 against all the officers including the Petitioner, which is now pending before the VI Additional Sessions Court at Chennai. In view of the pendency of the criminal case, no action was taken against the Petitioner and he moved the Contempt Application No. 35 of 2000 before the Tribunal, for non compliance of the order passed by the Tribunal in O.A. No. 9766 of 1999. On consideration of the plea of the Petitioner, the Tribunal, by order dated 14.03.2000, granted six months time to implement the order dated 23.07.1999.

3. However, the Government filed an appeal against the order of the Tribunal in W.P. No. 13573 of 2000 and during the pendency of the writ petition, the departmental enquiry was conducted and an enquiry report was submitted on 28.06.2001 by the Enquiry Officer. After considering the report of the Enquiry Officer and other relevant documents, the Government issued G.O.(D) No. 257, Co-operation, Food and Consumer Protection Department dated 02.12.2002, dropping the entire charges. Thereafter, when the writ petition No. 13573 of 2000 was taken up, the learned Division Bench of this Court, in its order dated 02.12.2003, given a direction to the 2nd Respondent to include the name of the Petitioner in the panel dated 21.02.2003, giving appropriate ranking and also to promote him. Further observation was that in the event of ultimately the Petitioner being acquitted in the criminal case, then he can put forth all other claims including that he ought to have been promoted long back.

4. Taking strength of the order passed by the learned Division Bench, the learned Counsel for the Petitioner submitted that when the departmental proceedings were already dropped by G.O.(D) No. 257, Co-operation, Food and Consumer Protection Department dated 02.12.2002, the Petitioner should be included in the panel dated 21.02.2003, giving appropriate ranking and further he should be promoted only on that basis. The Respondent also took lenient view and included the name of the Petitioner A.G. Chandrasekar, Deputy Registrar of Co-operative Societies, fit for promotion to the post of Joint Registrar of Co-operative Societies for the year 2001 and 2002, approved in G.O.(3D) No. 13, Co-operation, Food and Consumer Protection Department, dated 02.03.2004 and subsequently, issued promotion orders, promoting the Petitioner to the post of Joint Registrar of Co-operative Societies, in further G.O.(2D) No. 24, Co-operation, Food and Consumer Protection

Department dated 12.03.2004. The Petitioner subsequently, joined as Joint Registrar on 12.03.2004. While so, when he was continuing as Joint Registrar of Co-operative Societies, instead of considering the case of the Petitioner for the next avenue of promotion, namely, Additional Registrar of Co-operative Societies, by once again stating that the criminal case is pending against him in C.C. No. 1 of 2000 and declining to grant further promotion, namely, Additional Registrar of Co-operative Societies, the learned Counsel for the Petitioner submitted that when the Government has already dropped the Departmental proceedings in G.O.(D) No. 257, dated 02.12.2002 dropping the entire charges, they themselves considered the case of the Petitioner for promotion to the post of Joint Registrar of Co-operative Societies, in spite of the fact that the criminal case was pending as on 12.03.2004, therefore such a stand cannot be taken by the Respondents not to promote the Petitioner to the post of Joint Registrar of Co-operative Societies, since the same analogy should be equally applied for giving him further promotion namely Additional Registrar of Co-operative Societies because, the Criminal Case in C.C. No. 1 of 2000 was pending then as well as now. This double stand taken by the Respondents should be set aside by this Court and on that basis, he has come to this Court.

5. Strongly opposing the said prayer the learned Government Advocate appearing for the Respondents submitted that similarly when the Petitioner was serving as Deputy Registrar / Secretary of Tamil Nadu Co-operative Societies Marketing Federation Ltd, in the year 1996, finding that certain irregularities were found in the matter of cashew nut purchase against several Special Officers and other officials of the Tamil Nadu Co-operative Marketing Federation Ltd., the 2nd Respondents took serious steps by placing all of them under suspension. Subsequently, a charge memo under Rule 17(b) was also issued against all other persons including the Petitioner in proceedings dated 07.04.1997. As there was no direct participation of the Petitioner, he was not placed under suspension. But, in view of the charge memo issued under Rule 17(b), his name was deferred in the panel of the year 1996-97 for promotion to the post of Joint Registrar of Co-operative Societies. In the mean while, the Special officer of the Tamil Nadu Co-operative Marketing Federation Ltd., submitted his report regarding the role of the Secretary, in the matter of alleged cashew nut transactions. Since the involvement of the Petitioner was not satisfactory, all the departmental proceedings were dropped against the Petitioner. However, a Criminal case was also registered in C.C. No. 1 of 2000 on 06.03.2000 against all the officials including the Petitioner, which is pending on the file of the VI Additional Sessions Court at Chennai. In the meanwhile, all Departmental proceedings against the Petitioner were dropped, in view of the order passed by the Tribunal in O.A. No. 9766 of 1999, dated 23.07.1999, directing the Respondents to complete the enquiry within a period of six months and alleging the non-compliance of the order of the Tribunal, Contempt Application No. 35 of 2000 was filed. The learned Tribunal, by order dated 14.03.2000, again granted six months time to

implement the order dated 23.07.1999.

6. However, the writ petition was filed by the Government in W.P. No. 13573 of 2000 against the order of the Tribunal. During the pendency of the writ petition, the departmental domestic enquiry was conducted and an enquiry report was submitted on 28.06.2001 by the Enquiry Officer. Based on the domestic enquiry report and connected records, the Government issued G.O.(D). No. 257, Co-operation, Food and Consumer Protection Department, dated 02.12.2002, dropping all the charges in favour of the Petitioner. Taking note of that, this Court disposed of the writ petition No. 13573 of 2000 on 02.12.2003 stating as follows:

7. Admittedly the departmental proceeding has been dropped against the second Respondent herein by the Government. From the facts and circumstances it appears that it would take several years for the criminal proceedings to reach the stage of finality. That apart, it appears that only the same set of evidence has to be considered by the Criminal Court. In these circumstances, this Court is of the view that the Petitioners should be directed to include the name of G. Chandrasekaran, the Second Respondent herein the panel dated 21.02.2003 giving appropriate ranking and also to promote him. Accordingly, there will be a direction to that effect. It is made clear, in the event of ultimately 2nd Respondent being acquitted in the criminal case, then he can put forth all other claims including that he ought to have been promoted long back.

7. By taking shelter under the order passed by this Court in W.P. No. 13573 of 2000 dated 02.12.2003, the learned Government Advocate appearing for the Respondents argued further and opposed the claims of the Petitioner that the Division Bench of this Court has clearly given a finding that the Petitioner only after the completion of the criminal case, he can put forth all other claims including that he ought to have been promoted long back only in the event of the Petitioner being acquitted in the criminal case. She added that since the criminal case is pending even today, the prayer sought for by the Petitioner in the writ petition to promote him to the post of Additional Registrar of Co-operative Societies is premature. Further, the learned Government Advocate submitted that he is not fully qualified for the promotion, since the criminal case is pending against him. As per the order passed by the Division Bench of the Court, the name of the Petitioner shall be included in the panel of Deputy Registrar, fit for promotion to the post of Joint Registrar for the years 2001 and 2002, approved in G.O.(3D) No. 13, Co-operation, Food and Consumer Protection (CE1) Department, dated 03.02.2004 subject to the result of the criminal case pending against him. Since the criminal case is still pending, it is absolutely not correct for the Petitioner to show that the Petitioner is fully qualified for Additional Registrar of Co-operative Societies.

8. In support of her submission, she has also relied upon the judgment of the Apex Court in the case of [C.O. Arumugam and Others Vs. State of Tamil Nadu and Others](#), for a proposition that pending a disciplinary or criminal proceedings, inclusion of a

name or a person in panel can be deferred till conclusion of the proceedings. Finally, if such officer is exonerated or acquitted, he must be considered for promotion and if found suitable, promotion should be given with retrospective effect from the date on which their juniors were promoted and the learned Government Advocate has also relied on yet another judgment of the Apex Court in the case of [Union of India Vs. K.V. Jankiraman, etc. etc.,](#) for the same proposition.

9. Heard the learned Counsel appearing for the Petitioner and the learned Government Advocate appearing for the Respondents.

10. The Petitioner was directly recruited to the post of Deputy Registrar of Co-operative Societies through Tamil Nadu Public Service Commission in the year 1992 and he joined the service on 10.04.1992. Subsequently, he was posted as Deputy Registrar / Secretary of Tamil Nadu Co-operative Marketing Federation Limited on 03.01.1996. The Tamil Nadu Co-operative Marketing Federation Limited is a co-operative institution and the Special Officer in the rank of Additional Registrar of Co-operative Societies was exercising the powers of the Board as Special Officer and as per the bye-laws of the Tamil Nadu Co-operative Marketing Federation Ltd., the Petitioner, as a Secretary was the signatory of all the documents. While so, certain irregularities were found in the matter of Cashew nut purchase, as a result, the Special Officer and other officials of the Tamil Nadu Co-operative Marketing Federation Ltd. were placed under suspension except the Petitioner, since there was no direct or indirect participation in respect of the alleged business transactions. Subsequently, the Petitioner was issued with a charge memo under Rule 17(b) on 07.04.1997. In view of issuance of the Charge memo, his name was deferred in the panel of the year 1996-97 for promotion to the post of Joint Registrar of Co-operative Societies in Proceedings dated 17.04.1997. After some time, the Special Officer of the Tamil Nadu Co-operative Marketing Federation Ltd. submitted his report on 22.05.1997, indicating the role of Secretary of Tamil Nadu Co-operative Marketing Federation Ltd., namely, the Petitioner in the matter of alleged cashew nut transactions.

11. When no action was taken, the Petitioner filed O.A. No. 9566 of 1999 on the file of Tamil Nadu Administrative Tribunal, seeking for a direction to the Respondents to complete the enquiry within a stipulated time. The learned Tribunal, by order, dated 23.07.1999, directed the Respondents to complete the enquiry within a period of six months and further directed the Respondents to promote the Petitioner to the post of Joint Registrar of Co-operative Societies. Subsequently, a Criminal case was registered in C.C. No. 1 of 2000 on 06.03.2000 against all the officers including the Petitioner and in view of the pendency of the Criminal case before the VI Additional Sessions Court at Chennai, the Respondents found it difficult to implement the order passed by the Tribunal. Thereafter, a Contempt Application No. 35 of 2000 came to be filed by the Petitioner before the Tribunal, for non-compliance of the order dated 23.07.1999 passed by the Tribunal in O.A. No. 9566 of 1999. The Tribunal once again

passed an order dated 14.03.2000, granting six months time to implement the order dated 23.07.1999.

12. Aggrieved by the said order, the Government filed W.P. No. 13573 of 2003. However, in view of the findings of the Enquiry Officer dated 28.06.2001, the Government issued G.O.(D) No. 257, Co-operation, Food and Consumer Protection Department, dated 02.12.2002, dropping the entire charges against the Petitioner. In view of taking note of G.O.(D) No. 257, dated 2.12.2002, dropping the charges against the Petitioner, the Division Bench of this Court in its order dated 02.12.2003, directed the Respondents to include the name of the Petitioner in the panel dated 21.02.2003, by giving appropriate ranking and also to promote him. The order further stated that in the event of Petitioner getting acquittal from the criminal case, he can put forth all other claims including that he ought to have been promoted long back.

13. A plain reading of para 7 of the order passed by the Division Bench of this Court makes the case of the Petitioner unambiguously clear that the Petitioner can put forth all other claims including that he ought to have been promoted long back after the disposal of the criminal case provided he succeeds. It is also relevant to keep it in mind that after dropping all the charges by the Government in G.O.(D) No. 257, Co-operation, Food and Consumer Protection Department dated 02.12.2002, by taking lenient view of the case of the Petitioner, the Respondents included the Petitioner's name fit for promotion to the post of Joint Registrar of Co-operative Societies for the year 2001-2002 by approving his name in G.O.(3D) No. 13, Co-operation, Food and Consumer Protection Department, (CE.1) Department, dated 02.03.2004 and again issued another order, promoting the Petitioner as Joint Registrar of Co-operative Societies in G.O.(2D) No. 24, Co-operation, Food and Consumer Protection Department dated 12.03.2004. Therefore, he was already promoted from the post of Deputy Registrar of Co-operative Societies to the promotional post of Joint Registrar of Co-operative Societies and he has also joined as Joint Registrar of Co-operative Societies in Chennai region on 12.03.2004 and he is presently continuing as Joint Registrar of Co-operative Societies.

14. Therefore, the arguments advanced by the learned Counsel for the Petitioner that when the departmental proceedings were dropped by the Government in G.O.(D) No. 257, dated 02.12.2002 and subsequently, when the Petitioner was promoted from Deputy Registrar to Joint Registrar of Co-operative Societies for the year 2001-2002, by issuing promotion order in G.O.(2D) No. 24 dated 12.03.2004, refusing to give further promotion to the post of Additional Registrar of Co-operative Societies, for the very same reason that the Criminal case is pending against the Petitioner in C.C. No. 1 of 2000 on the file the VI Additional Sessions Court at Chennai, is legally unsustainable and cannot be espoused by this Court, in view of judgment of the Apex Court in the case of [C.O. Arumugam and Others Vs. State of Tamil Nadu and Others](#), . Let me extract the guiding words of the

Honourable Apex Court as found in Paras 5 and 9 ;

5. As to the merits of the matter, it is necessary to state that every civil servants has a right to have his case considered for promotion according to his turn and it is a guarantee flowing from Articles 14 and 16(1) of the Constitution. The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principles. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are concluded. They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

6. In the light of these principles, we may now examine the cases of Respondents 3 to 5.

7. Thiru A. Andi, Respondent 3, was not included in the panel for promotion on the ground that there was a criminal case pending against him. His exclusion then would not be found fault with. But it is now stated that he has been acquitted by the criminal court on September 13, 1989. It has been stated so in the counter-affidavit filed before this Court. If he has been acquitted, he must now be considered for promotion from the date on which his junior was promoted and if he is found suitable, he should be promoted with all consequential benefits.

8. Thiru L.V. Srinivasan, Respondent 4, was not included in the panel for promotion since there were disciplinary proceedings then pending against him. But when the panel was prepared and approved, there was no charge framed against him. It is, therefore, not proper to have overlooked his case for promotion. We therefore, direct that his case be considered for promotion on the date on which his junior was promoted and if he is found suitable he must also be promoted with all consequential benefits.

9. Thiru.G.P. Purushothaman, Respondent 5, appears to be an exception to the preceding norm. It is said that there was then charge sheet filed against him in the pending enquiry when the panel was prepared. His exclusion for promotion could not therefore be inappropriate. We may, however, observe that if he is exonerated in the pending enquiry, he be considered for promotion from the date on which his junior was promoted and if found suitable he be given promotion with all consequential benefits, but subject to seniority to be determined in C.A. Nos. 3815 and 3816 of 1988 pending in this Court. We may also observe that the departmental enquiry pending against him may be expedited.

15. A simple reading of Paragraph 5 clearly shows that the promotion of persons against whom charge has been framed in the disciplinary proceedings or charge-sheet has been filed in criminal case may be deferred till the proceedings are

concluded. Further, It is held that they must however be considered for promotion, if they are exonerated or acquitted from the charges. If found suitable, they shall then be given promotion with retrospective effect from the date on which their juniors were promoted. It is also not out of place to mention one more fact involved in this case that, admittedly in this case, though the Petitioner was issued with a charge memo under 17(b) Rules, the enquiry officer found him not guilty. Therefore, the departmental proceedings were dropped against the Petitioner. However, a Criminal case is pending against several others including the Petitioner even now. Therefore, even though, the departmental proceedings are dropped, the criminal case is even now pending. Therefore, as per para 9 of the Apex Court Judgment, his exclusion for promotion could not be found fault with. Merely for the reason that the departmental proceedings are dropped, one cannot predict that the Petitioner would meet same the consequence in the Criminal Court as well. Therefore, as long as the criminal case pending in C.C. No. 1 of 2000 is finally disposed of, the Petitioner cannot ask for promotion for the simple reason that the criminal case will take long time to get it clear.

16. Under these background, it is useful to refer to the judgment of the Apex Court in the case of [Union of India Vs. K.V. Jankiraman, etc. etc.](#), wherein it has been held as follows:

An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. While considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion.

As per the above judgment, what has to be taken into account for consideration is that, for the purpose of considering an employee for promotion, the whole record has to be taken into consideration and if a promotion Committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. Similarly, if the Respondent on the basis of the pendency of criminal case declines to give him further promotion, this Court cannot find fault with the stand taken by the Respondent department. The promotion to a post depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record that is the minimum expectation to ensure a clean and efficient administration and to protect the public interest. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. Therefore, as held by the Apex Court in the case of Union of India and Ors. v. K.V. Jankiraman and Ors. (cited supra), the Petitioner should wait till the disposal of the Criminal case. If he is finally acquitted from the criminal case, then he is legally entitled to get the notional promotion from the date on which the juniors were promoted including the arrears of salary from the date of notional promotion.

17. With these observations, the writ petition stands dismissed. However, in view of the fact that the criminal case is pending for quite long time, a direction is given to the VI Additional Sessions Court, Chennai to dispose of the Criminal case in C.C. No. 1 of 2000, on merits and in accordance with law, by keeping in mind that the matter is pending from the year 2000, at the earliest possible time, preferably within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is dismissed.