



W.P.No.29014 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	29.01.2024
Pronounced on	:	01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.29014 of 2010

1.M.Asokan (Died)
2.A.Raja
3.A.Srinivasan
4.A.Abinaya
(Petitioners 2 to 4 are impleaded vide
Order made in WMP.No.3999 of 2017
dated 09.12.2019)

...Petitioners

Vs.

1.The Registrar of Co-operative Societies,
No.170, E.V.R Periyar Salai,
N.V.N., Maligai, Kilpauk,
Chennai – 600 010.

2.The Joint Registrar of Co-operative Societies,
Kancheepuram.

3.The Deputy Registrar of Co-operative Societies,
Kancheepuram.

4.K.Anandan
The Deputy Registrar/The Chief Revenue Officer,
The District Central Co-operative Bank.,
Vellore, Vellore District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents, especially the second respondent relating to his proceedings made in RC No.8717/1997 A1 dated 26.03.2009 as confirmed by the first respondent pursuant to his proceedings made in Na.Ka.No.57575/2009 O.Na.3 dated 20.09.2010, and quash the same as null and void, illegal and invalid and consequently directing the respondents to reinstate the petitioner in service as 'Senior Inspector' of Co-operative Societies with all service and monetary benefits.

For Petitioners : Mr.A.Amal Raj

For Respondents : Mr.V.Ramesh (for R1 to R3)
Government Advocate

ORDER

This Writ Petition is filed calling for the records of the respondents, especially the second respondent relating to his proceedings made in RC No.8717/1997 A1 dated 26.03.2009 as confirmed by the first respondent pursuant to his proceedings made in Na.Ka.No.57575/2009 O.Na.3 dated 20.09.2010, and quash the same and consequently direct the respondents to reinstate the petitioner in service as 'Senior Inspector' of Co-operative Societies with all service and monetary benefits.



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2.The case of the petitioner namely M.Asokan is that he joined in service as Junior Assistant from 03.02.1982 and promoted as Junior Inspector, Senior Inspector of Co-operative Society. Considering his meritorious service, he was given additional charge as Senior Inspector/Special Officer, Civil Supplies Corporation Employees Co-operative Banks (PDS-I), Kanchipuram under the control of Deputy Registrar (PDS), Kancheepuram and assigned with additional charge of Special Officer for the following banks/Co-operative Societies etc.,

- i) Idayampudhur Primary Agricultural Co-operative Bank
- ii) Manmangalam Padappai Primary Agricultural Co-operative Bank
- iii) Porpanthal Primary Agriculture Co-operative Bank
- iv) Manichettupattu Primary Agriculture Co-operative Bank
- v) Civil Supplies Corporation Employees Co-operative Society.

2.1.While that being the case, 3rd respondent raised certain generalized allegations for the period from 29.07.1991 to 31.08.1995 with regard to deficit cash balance, sanction of loan amount, entries without disbursing Rs.1,98,895/-. Entries said to have been made to show that as if disbursements had been made. An enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. The Enquiry Officer Thiru.Anandan was the



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District President of the Tamil Nadu Government Employees' Association.

Petitioner is the office bearer of the Tamil Nadu Government Co-operative Department Sub-ordinate Services Association. 2nd respondent obtained petitioner's statement by threat and coercion and compelled him to deposit a sum of Rs.90,000/-, else he would be sent to jail. The Enquiry Officer seems to have arrived at a finding on the basis of said statement. Thiru.Anandan advised to proceed with departmental disciplinary action, Surcharge proceedings under Section 87 of the Tamil Nadu Co-operatives Act, 1983 against the petitioner. Due to malafide act on the part of the authorities concerned, three different but simultaneous actions have been proceeded against the petitioner. Evidence have been collected against the petitioner by threat and coercion. The criminal case filed against the petitioner that C.C.No.312 of 2001 and C.C.No.313 of 2001 on the file of the learned Judicial Magistrate Court, Kanchipuram ended in conviction on 03.06.2002. Petitioner was imprisoned till raising of the Court, with a fine of Rs.1,000/-. In surcharge proceedings under Section 87 of the Act, an order was passed by 3rd respondent, directing the petitioner to pay a sum of Rs.56,344/-. Copy of the Domestic Enquiry report was given to him on 21.08.1999.



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2.2.After more than 15 years from the date of the alleged occurrence and 10 years after the completion of domestic enquiry, 2nd respondent issued a show cause notice by proceedings in Rc.No.8717/97 A1 dated 11.09.2008 under Rule 17(c)(i)(1) of Tamil Nadu Civil Services (Discipline and Appeal) Rules calling for representation, after taking a decision to impose punishment of 'Removal from service' as specified under Rules 8 of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Petitioner submitted his representation dated 14.11.2008 alleging non-supply copy of enquiry report for the enquiry held under Section 81 of Tamil Nadu Co-operative Societies Act. Prior to this, 2nd respondent by his proceedings Na.Ka.No.8717/97 A1 dated 30.09.2005 called for petitioner's explanation for passing final orders on the charge framed under Section 17(b), without referring to the conviction in criminal case.

2.3.Petitioner submitted his explanation dated 26.10.2005, complaining about the non-supply copy of enquiry report for the enquiry held under Section 81 of the Act. Petitioner was not provided with the copy of the enquiry report. No punishment was imposed against the petitioner in pursuance of the proceedings in Na.Ka.No.8717/97 A1 dated 30.09.2005. After petitioner was convicted in the criminal case, a show cause notice in Rc.No.8717/1997 A1 dated 11.09.2008 was issued. Despite submitting petitioner's representation,



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2nd respondent in a proceedings in Na.Ka.No.8717/97/Aa1 dated 19.02.2009, rejecting the request and in pursuance of the proceedings in Rc.No.8717/1997 A1 dated 26.03.2009 removed the petitioner from service by a non-speaking order.

2.4.In the Appeal filed before the 1st respondent, petitioner raised all the illegalities and irregularities in passing the removal order. However, 1st respondent in his proceedings in Na.Ka.No.57575/2009 O.Na.3 dated 20.09.2010 rejected the Appeal.

2.5.Learned counsel for the petitioner mainly submitted that, irrespective of the merits of the charges against the petitioner, there was a huge delay at every stage of departmental proceedings, right from the issuance of charge memo, till the removal of the petitioner from service. It is submitted that petitioner was placed under suspension from 31.08.1995 to 20.03.1998. The charge memo was issued by the 3rd respondent to him on 07.05.1996. In O.A.No.7229 of 1997, respondent was directed to furnish copies of the documents relied by the applicant. 3rd respondent by his proceedings dated 08.10.1997 rejected the petitioner's request to furnish copy of the enquiry report for the enquiry held under Section 81 of Tamil Nadu Co-operative Societies



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Act. On 20.03.1998, petitioner was reinstated. Disciplinary Proceedings was initiated on 11.10.1999 with a issuance of a charge memo. The criminal case in C.C.No.312 of 2001 and 313 of 2001 ended in conviction on 03.06.2002. The criminal Appeal filed against the judgment in CrI.A.No.69 of 2002 and 70 of 2002 had been dismissed on 21.05.2003. On 30.09.2005, a show cause notice was issued to the petitioner seeking his explanation on the final order to be passed in the enquiry proceedings. Petitioner submitted reply dated 26.10.2005, seeking 15 days time for submitting his explanation with a request to furnish a copy of the enquiry report for the enquiry held under Section 81 of the Act. On 11.09.2008, the Joint Registrar of Co-operative Societies issued a show cause notice under Rule 17(c)(i)(1) Tamil Nadu Civil Services (Discipline and Appeal) Rules, seeking the petitioner's representation as to why, petitioner should not to be imposed the penalty of removal from service, in view of the conviction and sentence passed against him in C.C.No.312 and 313 of 2001, which was confirmed in Criminal Appeals in CA.No.69 of 2002 and 70 of 2002. Petitioner submitted his reply dated 29.09.2008, seeking 15 days time for getting legal assistance and for submitting his reply. Again he sent a representation dated 15.10.2008 seeking 30 days time. He sent a representation dated 14.11.2008 seeking the copy of enquiry report for the enquiry held under Section 81 of Tamil Nadu Co-operative Societies Act for setting up his defence.



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His request was rejected by proceedings of Joint Registrar in Na.Ka.No.8717/1997 A1 dated 19.02.2009. Then on 26.03.2009, the Joint Registrar of Co-operative Societies imposed the punishment of removal from service. The Appeal filed by petitioner on 28.05.2009 against the punishment was rejected on 20.09.2010.

2.6.It is the further submission of the learned counsel for the petitioner that though the charge memo was issued on 07.05.1996, there was a huge delay in completing the enquiry. Petitioner was not provided with the copy of the report filed for the enquiry under Section 81 of Tamil Nadu Co-operative Societies Act for effectively defending the enquiry proceedings. Though the enquiry report was filed on 21.08.1999, show cause notice was issued only on 30.09.2005. The notice dated 30.09.2005, specifically reads that, it was decided to pass orders on the departmental enquiry without waiting for the outcome of the criminal case. The Criminal Appeals were disposed on 21.05.2003 itself. Without proceeding to pass orders under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal Rules), suddenly a show cause notice dated 11.09.2008 was issued for imposing punishment of removal from service, on the basis of the conviction in criminal case. From the date of issuance of charge memo i.e., on 07.05.1996, the respondents took nearly 15 years for imposing



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the punishment of removal from service. This long delay in conducting the departmental proceedings is against the well settled proposition of law that departmental proceedings should be disposed with promptitude.

2.7.He further submitted that, during the pendency of this petition, petitioner had died and his legal heirs were impleaded as petitioners. Since petitioner is dead, there is no question of reinstatement of the petitioner but his legal heirs would get sum monetary benefits.

In support of his submissions, he produced the following judgments,

- (i) The judgment of the Hon'ble Supreme Court in Appeal (Civil).No.4901 of 2005 in the case of P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board.*
- (ii)W.P.No.34197 of 2016 in the case of B.Maximus Vs. The State of Tamil Nadu & ors.*

3.In response, learned counsel for the respondents submitted that this is not the first misconduct committed by the petitioner. He was already awarded two punishments i.e., censure in the proceedings of the Deputy Registrar (Non Credit), Chennai in proceedings in Rc.No.1684/90/A1 dated 31.01.1991 and



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stopping of increment for two years with cumulative effect by the proceedings of the Joint Registrar of Co-operative Societies in Rc.No.8721/01/A1 dated 31.07.2002. Petitioner had swindled Rs.2,20,000/- from the Tamil Nadu Civil Supplies Corporation Employees Co-operative Societies by making false entries in the books of accounts with the collusion of Secretary of the Society. Therefore, enquiry under Section 81 of the Act was conducted. The enquiry was conducted under due process of law. The criminal case registered against the petitioner had also ended in conviction with imposition of sentence. Petitioner admitted that he and the Secretary of the Society took a sum of Rs.2,02,835/- and remitted Rs.90,000/- towards his share. This itself proves the misconduct committed by the petitioner. Thereafter, the disciplinary proceedings were initiated. The enquiry under Section 81 of Tamil Nadu Co-operative Societies Act is different from the departmental enquiry for the misconduct committed by the petitioner. After the petitioner was convicted in two criminal cases with imprisonment, show cause notice was issued to him under Rule 17(c)(i)(1) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Only after considering his explanation, he was punished. There is nothing illegal in it.

3.1.It is further submitted that petitioner was also responsible for the



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delay in completing the enquiry proceedings. He filed O.A.No.7225 of 1997 seeking copies of certain documents and that had also caused delay in completing the enquiry proceedings. He was reinstated on 20.03.1998 and was serving till he was removed from service. Though the enquiry proceedings was initiated under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, in view of the conviction and imposition of sentence in criminal cases, action was taken against him under Rule 17(c)(i)(1) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. There is no illegality in it. Mere delay in completing the departmental proceedings is not a ground for exoneration. Thus, learned counsel for the respondents prays for dismissal of this petition.

4.Considered the rival submissions and perused the records.

4.1.The gist of the charges against the petitioner are that.

குற்றச்சாட்டு எண்.1

இவர் அரசு அலுவலர் என்ற முறையில் தனி அலுவலராக பணிபுரிய நியமிக்கப்பட்ட செங்கற்பட்டு எம்ஜிஆர் மாவட்ட தமிழ்நாடு நுகர்பொருள் வானிய கழக பணியாளர் கூட்டுறவு கடன் மற்றும் சிக்கன நாணய சங்கத்தின் தனி அலுவலருக்குரிய பொறுப்புகளையும் கடமைகளையும் நிறைவேற்றத் தவறியுள்ளார்,

குற்றச்சாட்டு எண்.2

இவர் தான் தனி அலுவலராக பணிப்பொறுப்பு வகித்து வந்த செங்கை எம்ஜிஆர் மாவட்ட தமிழ்நாடு நுகர்பொருள் வானிய கழக பணியாளர்கள் கூட்டுறவு



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சிக்கன மற்றும் கடன் சங்கத்திற்கு சொந்தமான நிதியை காரணமின்றி வங்கிக் கணக்கில் இருந்து அவ்வப்போது எடுத்து அவ்வாறு எடுத்த தொகைகளை தொடர்ந்து சங்கக் கணக்குகளில் ரொக்க கையிருப்பு இருப்பதாக காட்டிவந்து அந்த தொகைகளை பின்னர் பொய்க்கணக்குகள் எழுதி மேற்படிக்கையிருப்பினை கையாடல் செய்துள்ளார். மேலும் தனி அலுவலர் பதவியின் அதிகாரத்தினை தன் சுயநலனுக்காக துர்பிரயோகம் செய்துள்ளார்.

குற்றச்சாட்டு எண்.3

குற்றச்சாட்டு 2ல் தெரிவிக்கப்பட்ட நிதிக் கையாடலை மறைக்க ஏதுவாக சங்கத்தில் கணக்குகளில் அங்கத்தினர்களுக்கு கடன் வழங்கியதாகவும் இதர வகைகளில் பணம் பட்டுவாடா செய்ததாகவும் 19.8.95 மற்றும் 21.8.95 ஆகிய தேதிகளில் பொய் கணக்குகளை எழுதிடவும் மேற்படி சங்க செயலாளருக்கு உடந்தையாகவும் இருந்து தவறுகளை செய்யவும் அவற்றை மறைக்கவும் துணைபுரிந்துள்ளார்.

4.2.In pursuance of these charges issued under charge memo in Na.Ka.No.5940/95 vi.sa(1) dated 07.05.1996, departmental enquiry was conducted and the Enquiry Officer filed his report dated 21.08.1999. It is true that, no final order was passed on the basis of the enquiry report immediately. Even when the enquiry was pending, petitioner was reinstated on 20.03.1998. On 11.10.1999, he was issued a show cause notice along with copy of the enquiry report seeking his explanation to the enquiry report. It is not known, whether petitioner submitted any explanation in response to the show cause notice dated 11.10.1999. Thereafter, there was no further orders passed by the respondent, on the basis of the enquiry report. Apparently, they waited for the



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outcome of the criminal cases registered against the petitioner in C.C.No.312 of 2001 and C.C.No.313 of 2001. These cases ended in conviction, confirmed by the Appellate Court in CrI.A.Nos.69 of 2002 and 70 of 2002. A show cause notice dated 30.09.2005 was issued stating that, “final orders would be passed without referring to the outcome of the criminal Court.” Without proceeding further, on the basis of the show cause notice dated 30.09.2005, another show cause notice dated 11.09.2008 was issued for removing the petitioner from service on the basis of his conviction in the criminal cases.

4.3.It is pertinent to refer Rule 17(c) in this regard,

(c)Procedure to be followed when a Government Servant is convicted on a Criminal Charge/convicted by Court Martial/absconded or other reasons:(1) The requirements of sub-rule (b) shall not apply where it is proposed to impose on a member of a service any such penalty as is referred to in clause (i) of that sub-rule on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment); but he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed.



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(2) The requirements of sub-rule (b) shall not apply where it is proposed to impose on a member of a service any of the penalties mentioned in rule 8 or 9, on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reasons impracticable to communicate with him.

(ii) The provisions of sub-rule (b) shall not apply where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow the procedure prescribed in that sub-rule.

The heading of Rule 17(c) itself suggests that Procedure to be followed when a Government Servant is convicted on a Criminal Charge. This Rule makes it clear that the requirements of sub-rule 17(b) shall not apply, where it is proposed to impose a penalty on a member of a service, on the basis of facts which have led to his conviction in a criminal court. The only requirement is that the member of a service shall be given a reasonable opportunity of making any representation and it shall have to be taken into consideration before the order imposing the penalty.

4.4. In the case before hand, before the order of removal from service of the petitioner, he was given an opportunity to make a representation. After considering his representation, the impugned order of removal from service was



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passed. After conviction in criminal cases against the petitioner, the respondent had two options. Either to proceed with the enquiry under Section 17(b) and pass final orders or straight away pass orders on the basis of the conviction under Section 17(c). The respondent chose to follow the 2nd option of imposing punishment under Section 17(c). That cannot be considered as illegal.

4.5.It is a case of misappropriation of funds to the tune of Rs.2,00,000/-. Petitioner had repaid Rs.90,000/- of this amount. Learned counsel for the respondents submitted that the Enquiry Officer has also found the charges proved. The criminal cases were pending against the petitioner. He had filed OA.No.724 of 1997. Though it is not necessary for the department to wait for the outcome of the criminal cases, the department chose to wait for the outcome of the criminal cases. Had the criminal cases had ended in acquittal, may be the final outcome of the enquiry proceeding under Rule 17(b) would have been different. Since the criminal cases ended against the petitioner, the respondent had right to proceed against him under 17(c) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and that cannot be considered as illegal and irregular.



4.6.As already stated, learned counsel for the petitioner submitted that the there was a huge delay in initiation and completion of departmental proceedings. It is pertinent to refer to the relevant portion of the judgment of the Hon'ble Supreme Court in Appeal (Civil).No.4901 of 2005 in the case of ***P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board*** for better appreciation.

“Mr. Prabhakar also invited our attention to the affidavit filed by the appellant in support of his case. It is stated in para 14 of the affidavit that the respondent with the mala fide intention issued the present charge memo against the appellant even though the alleged incident of issuance of sale deed was of the year 1990, which was 10 year prior to the issuance of charge memo and that very reason for issuing charge memo was that the appellant could be detained from promoting to the post of Chief Engineer of the Housing Board.

The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.”



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4.7. The relevant portion of the order in W.P.No.34197 of 2016 in the case of B.Maximus Vs. The State of Tamil Nadu & ors is extracted herein under,

“10. The Hon'ble Supreme Court and this Court in numerous decisions have held that inordinate delay in initiation or completion of disciplinary proceedings by itself would cause grave prejudice to the rights of the government employees and interfered with disciplinary proceedings on that ground alone. In this case, to say that there was inordinate delay in completion of the departmental action is an understatement. .”

12. In the above decisions, the Courts have interfered with the disciplinary action on the ground of delay alone. There cannot be a better case than the present one for this Court's to interfere and to hold that non-completion of the departmental proceedings pursuant to the impugned charge memoranda cannot be countenanced in law or on facts. In such circumstances, the charge memoranda are liable to be quashed as the same have been kept pending for an extraordinary and agonising length of time for no valid reasons. Moreover, the petitioner is 86 years old and to subject him to enquiry proceedings at this age for no fault of his would only result in grave miscarriage of justice.”



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4.8. It is true that delay in initiation and disposal of Disciplinary Proceedings had been time and again deprecated by the High Courts and Hon'ble Supreme Court. However, in the case before hand, the deceased petitioner had also contributed to the delay by filing O.A.No.7229 of 1997, seeking copy of the enquiry report for the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, seeking time to submit his reply to the show cause notice. That apart, criminal cases had also been pending. The respondents thought it fit to wait for the outcome of the criminal cases and criminal appeals. All these factors cumulatively contributed to the delay in disposal of the enquiry proceedings. It is not that petitioner is out of employment during the enquiry proceedings. Though he was suspended during the period from 31.08.1995 to 20.03.1998, he was reinstated into service on 20.03.1998 and was in service till the punishment of removal from service was imposed on 26.03.2009. He was drawing salary and other monetary benefits during this period. In such circumstances, this Court is of the view that, merely because there is a delay in disposal of the Disciplinary Proceedings, the punishment imposed against the deceased petitioner for the proved misconduct cannot be set aside.



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4.9. In this view of the matter, this Court is of the view that petitioner's prayer for setting aside the proceedings of the 2nd respondent in RC No.8717/1997 A1 dated 26.03.2009 and the proceedings of the first respondent in Na.Ka.No.57575/2009 O.Na.3 dated 20.09.2010 cannot be entertained. Accordingly, this Writ Petition is dismissed. No costs.

14.02.2024

Index: Yes/No
Speaking/Non speaking order
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G.CHANDRASEKHARAN.J.,

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To

- 1.The Registrar of Co-operative Societies,
No.170, E.V.R Periyar Salai,
N.V.N., Maligai, Kilpauk,
Chennai – 600 010.
- 2.The Joint Registrar of Co-operative Societies,
Kancheepuram.
- 3.The Deputy Registrar of Co-operative Societies,
Kancheepuram.
- 4.The Deputy Registrar/The Chief Revenue Officer,
The District Central Co-operative Bank.,
Vellore, Vellore District.

Pre-Delivery Order in
W.P.No.29014 of 2010

01.03.2024