

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Writ Petition Nos.39977 and 39979 of 2015 and 16146 of 2008
and

M.P.No.1 of 2015 (2 petitions) in W.P.Nos.39977 and 39979 of 2015
and

M.P.No.1 of 2008 in W.P.No.16146 of 2008

K.R.Selvaraj .. Petitioner in all the Writ Petitions

Vs.

1. The Registrar of Co-operatives,
Poonamallee High Road,
Kilpauk, Chennai-10.

2. The Joint Registrar of Co-operatives,
Coimbatore Region,
Coimbatore.

3. The Deputy Registrar of Co-operatives,
Coimbatore.

... Respondents in W.P.No.39977 of 2015

1. The Principal Secretary to Government,
Co-operation and Food Consumer Protection Department,
Chennai-09.

2. The Registrar of Co-operatives,
Poonamallee High Road,
Kilpauk, Chennai-10.

.. Respondents in W.P.No.39979 of 2015

1. The Registrar of Co-operative Societies,
Poonamallee High Road,
Kilpauk, Chennai-10.

2. The Joint Registrar of Co-operative Societies,
Coimbatore Region,
Coimbatore-2.

3. The Coimbatore Co-operative Housing Society,
Gopalapuram,
Coimbatore, rep. by its Special Officer.

.. Respondents in W.P.No.16146 of 2008

Writ Petition No.39977 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the second respondent in connection with the impugned charge memo issued by him in Na.Ka.No.7188/2002/patho, dated 25.11.2005 and quash the same.

Writ Petition No.39979 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to consider the claim of the petitioner's promotion as Deputy Registrar of Co-operatives on par with his junior without reference to the pending charge memo and promote him as Deputy Registrar of Co-operatives and grant him all consequential service and monetary benefits.

Writ Petition No.16146 of 2008 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari after calling for the records of the first respondent pertaining to his proceedings in R.C.No.2474/2007/P/A.1(7) and quash the order dated 26.05.2008.

For Petitioner : Mr.G.Ilamurugu
For Respondents : Ms.T.Giriya, Govt. Advocate

COMMON ORDER

Since the petitioner is one and the same and since the issues involved in all these Writ Petitions are also one, as they are inter-related to each other, the Writ Petitions are disposed of by this common order.

2. Writ Petition No.39977 of 2015 is filed praying for issuance of a Writ of Certiorari to call for the records of the second respondent in connection with the impugned charge memo issued by him in Na.Ka.No.7188/2002/patho, dated 25.11.2005 and quash the same.

3. Writ Petition No.39979 of 2015 is filed praying for issuance of a Writ of Mandamus to direct the respondents to consider the claim of the petitioner's promotion as Deputy Registrar of Co-operatives on par with his junior without reference to the pending charge memo and promote him as Deputy Registrar of Co-operatives and grant him all consequential service and monetary benefits.

4. Writ Petition No.16146 of 2008 is filed praying for issuance of a Writ of Certiorari after calling for the records

of the first respondent pertaining to his proceedings in R.C.No.2474/2007/P/A.1(7) and quash the order dated 26.05.2008.

5. It is averred by the petitioner in W.P.No.16146 of 2008 that he was working as Co-operative Sub-Registrar and posted as Co-operative Sub-Registrar--Internal Audit, Coimbatore District Consumer Co-operative Wholesale Stores Ltd., Coimbatore. Earlier, on deputation he was working in Co-operative Housing Department and posted as C.S.R.(Housing) in the office of the Deputy Registrar (Housing), Coimbatore. On additional duty, between 20.01.2005 and 28.08.2006, he was also working as Special Officer of the third respondent-Coimbatore Co-operative Housing Society. A housing project was taken up at Perur Chetypalayam Panchayat. The petitioner's predecessor Special Officer identified a stretch of land to the extent of 1540 cents belonging to various individuals. As a condition precedent, through a Power of Attorney Holder, the said land was developed into a lay-out, which was duly approved by Thondamputhur Panchayat Union for 385 plots. With these details, the petitioner's predecessor Special Officer submitted a proposal, dated 21.01.2003 before the Deputy Registrar (Housing), Coimbatore, who after careful consideration, recommended the proposal to the Registrar of Co-operative Societies (Housing), Chennai, and the Registrar of Co-operative Societies (Housing), by order in Na.Ka.No.1294/2003/E4, dated 18.02.2003, granted permission with some conditions to purchaser of the said land to the extent of 1540 cents at the rate of not exceeding Rs.24,000/- per cent. One of the instructions issued by the Registrar (Housing) was that the individual sellers must bear the charges towards stamp duty and registration charges for execution of their respective sale deeds.

6. It is further stated that while executing the sale deeds, some of the vendors made a plea before the Registrar (Land Registration) that they may be exempted from payment of stamp duty, since their sale is in favour of the Co-operative Society. Pending consideration of their request, some of the sale deeds could not be released immediately. Out of 30 documents entered into between the respective vendors and the third respondent-Society in the year 2003, the then Special Officer had released 11 documents and possession of the land was taken over and the remaining 19 documents were registered as pending documents. Since many of the documents were not released, the third respondent-Society could not sell the plots to the prospective buyers. Since a substantial amount was paid towards those purchases, the respondents were under a compelling circumstance to take some immediate decisions in that regard. Thereafter, the then Special Officer of the third respondent-Society, who was fully involved in the purchase of lands, was transferred and thereafter, two more officers were also posted as Special

Officers to take up the task, but they could not achieve the expected result.

7. In the above circumstances, the Deputy Registrar of Co-operative Societies (Housing), Coimbatore, by proceedings in Na.Ka.No.1800/2000, dated 19.01.2005, had recommended to the Registrar (Housing) that the petitioner may be posted as the Special Officer of the third respondent-Society, so as to execute a pending work without any further delay. Accordingly, on approval of the first respondent, the petitioner was posted as Special Officer of the third respondent-Society and he assumed charge on 20.01.2005. Thereafter, the petitioner took steps to streamline the functioning of the third respondent-Society. From the suspense account maintained in the name of the vendors, the payment towards stamp duty and registration charges were released to the office of the Registrar and the pending documents were registered. Land equivalent to the cost paid to the land owners, was registered then and there, in the name of the third respondent. The amount so paid to the Registrar from the suspense account of the vendors, was adjusted towards their respective sale proceeds and the third respondent has not incurred any expense either towards stamp duty or registration charges. The entire 355 plots were sold for the rates as approved by the Registrar. The third respondent-Society earned a substantial profit in the project. Basic amenities were developed in the lay-out, roads were laid, water connection was secured and the entire area was developed into a township.

8. While so, on 28.08.2006, the petitioner was transferred from the third respondent-Society and posted as Assistant Director, Milk Audit and from there, on 01.05.2008, he was brought back to the parent Department and was working as Co-operative Sub-Registrar--Internal Audit, Coimbatore District Consumer Co-operative Wholesale Stores Ltd., Coimbatore. In this situation, the impugned charge memo, dated 26.05.2008 was served on the petitioner stating that the petitioner failed to carry out the instructions of the Registrar (Housing), Chennai in proceedings No.1284/2003/C4, dated 18.02.2003, by not obtaining the prevailing market rate from the DRO, Coimbatore and compared it with the rate paid to the Power Agent in Perurchetypalayam Housing Scheme, as a result, the petitioner caused harm to the funds of the Society, thereby he failed to discharge his duties and responsibilities properly. Challenging the said charge memo, dated 26.05.2008, the petitioner has filed W.P.No.16146 of 2008.

9. Challenging another charge memo, dated 25.11.2005, which was issued prior to the issuance of the above said charge memo, dated 26.05.2008 (in W.P.No.16146 of 2008), the petitioner filed W.P.No.39977 of 2015. The said charge memo, dated 25.11.2005 relates to the occurrence that took place in 1993 and after a lapse of 12 years, four charges were framed against the

petitioner. The crux of the allegation is that while the petitioner was serving as Special Officer, Avinashi Carpentry and Blacksmith Workers Co-operative Society from 12.05.1993 to 27.07.1993, he had advanced the Society's money to the three individuals without any jurisdiction. It is the grievance of the petitioner that the allegation is not maintainable, since he had not joined in the deputation post (Foreign service) at Avinashi and has not served at any point of time in Avinashi, and hence, there is no avocation to advance or handle the Society's money. For the same set of allegations, a criminal case has also been initiated against the petitioner by the DV and AC, which has been quashed by this Court in Crl.R.C.No.1396 of 2013, by order dated 29.10.2015. Hence, challenging the said charge memo, dated 25.11.2005, the petitioner has filed W.P.No.39977 of 2015.

10. In the meantime, the petitioner has also filed W.P.No.39979 of 2015 to direct the respondents to consider the claim of the petitioner for promotion as Deputy Registrar of Co-operatives on par with his junior, without reference to the pending charge memo and grant him all consequential service and monetary benefits.

11. When all the Writ Petitions were taken up for consideration, learned counsel for the petitioner submitted that challenging the charge memo, dated 25.11.2005, the petitioner earlier filed W.P.No.1744 of 2007 and the said charge memo, dated 25.11.2005 is also impugned in W.P.No.39977 of 2015. This Court, by order dated 18.12.2009 in W.P.No.1744 of 2007, directed the petitioner to submit his explanation to the charge memo, dated 25.11.2005, within a period of three weeks from the date of receipt of a copy of the order and the respondents were directed to consider the same and if necessary, to hold enquiry and pass appropriate orders on the basis of the enquiry report, within a period of three months thereafter. In spite of the specific direction of this Court, the enquiry has not yet been completed and hence, learned counsel for the petitioner prayed that the charge memos are liable to be quashed and the petitioner may be considered for promotion to the post of Deputy Registrar of Co-operative Societies on par with his junior. In support of his contentions, learned counsel for the petitioner relied on a decision of a Division Bench of this Court reported in 2010 (3) MLJ 625 (State of T.N. Vs. T.Ranganathan) and a decision of the Supreme Court reported in 1995 (2) SCC 570 (State of Punjab Vs. Chaman Lal Goyal).

12. Countering the above submissions, learned Government Advocate appearing for the respondents, by filing detailed counter affidavit, submitted that the respondents are in the process of conducting enquiry and during the course of enquiry, the petitioner has right to call for relevant records, witnesses, cross-examine the witnesses and submit his explanation to defend his case and prove his innocence, but the

petitioner has not availed the opportunities and playing tricks to prolong the enquiry by trying to deviate the proceedings by making unnecessary representations. Hence, the learned Government Advocate appearing for the respondents prayed for dismissal of the Writ Petitions.

13. Keeping in mind the above submissions made by the learned counsel on either side, I have carefully considered the same and perused the materials available on record.

14. It is the main contention of the learned counsel for the petitioner that inspite of the specific direction of this Court in W.P.No.1744 of 2007, by order dated 18.12.2009, the respondents have not completed the enquiry even after a lapse of six years, and therefore, the charge memos are liable to be quashed. In this context, learned counsel for the petitioner relied on a decision of a Division Bench of this Court reported in 2010 (3) MLJ 625 (State of Tamil Nadu Vs. T.Ranganathan), wherein, the Division Bench of this Court held that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order and the party to the proceedings could approach the very same Court seeking extension of time stating sufficient reasons and once valid reasons are given, normally, the Court/Tribunal would extend the time depending upon the facts and circumstances of the case.

15. On a reading of the above dictum laid down by the Division Bench of this Court, it is seen that when once the outer time limit is fixed to complete the enquiry, the parties are bound to abide by the same strictly and if for one reason or the other, the respondents find it difficult to complete the enquiry within the stipulated time, they ought to have approached the Court concerned seeking extension of time by stating sufficient reasons. In this case, the respondents have not sought for extension of time to complete the enquiry. On this sole ground, the impugned charge memos are liable to be quashed in both the Writ Petitions in W.P.Nos.39977 of 2015 and 16146 of 2008.

16. With regard to the promotion sought for by the petitioner in W.P.No.39979 of 2015, learned counsel for the petitioner relied upon a decision of the Supreme Court reported in 1995 (2) SCC 570 (State of Punjab Vs. Chaman Lal Goyal), and submitted that as per the dictum laid down in the said decision of the Supreme Court, disciplinary proceedings must be conducted soon after the irregularities committed or soon after discovering the irregularities. Learned counsel for the petitioner therefore submitted that pendency of the enquiry proceedings cannot be a bar to consider the request of the

petitioner for promotion. It is relevant to quote the following observations of the Supreme Court in the said decision:

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."

17. However, considering the submissions made by the learned counsel for the petitioner, I am of the opinion that though the impugned charge memos are liable to be quashed as observed by the Supreme Court in the said decision, only on the reason that inspite of the direction given by this Court for completing the enquiry within three months in W.P.No.1744 of 2007, dated 18.12.2009, the enquiry proceedings in this case had not been completed even after a lapse of six years and that no further extension of time was sought for by the respondents to complete the enquiry, but at the same time, I find that this Court cannot find fault with the respondents for pendency of the charge memo proceedings which were challenged in W.P.Nos.39977 of 2008 and 16146 of 2008, since, initially, there was an order of interim stay in W.P.No.16146 of 2008 for conducting enquiry, and hence, this Court is of the considered view that it would be appropriate for this Court to give direction to the respondents for completing the enquiry within certain time limit.

18. Accordingly, the respondents are directed to conclude the enquiry proceedings and pass orders within a period of three months from the date of receipt of a copy of this order. The

petitioner shall co-operate with the respondents in the enquiry proceedings. If the enquiry proceedings are not completed within the said time limit, the respondents are directed to consider the name of the petitioner for promotion to the post of Deputy Registrar of Co-operative Societies on par with his juniors.

19. With the above observations and directions, the Writ Petitions are disposed of. No costs. The Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

Copy to

1. The Registrar of Co-operative Societies,
Poonamallee High Road,
Kilpauk,
Chennai-10.
2. The Joint Registrar of Co-operative Societies,
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Coimbatore-2.
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Coimbatore, rep. by its Special Officer.

+3 cc's to M/s.G.Ilamurugu,advocate,sr.64291

+1 cc to Government Pleader,sr.64952.

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krd 21/11

W.P.Nos.39977 and 39979 of 2015
and
16146 of 2008