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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.08.2016
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD)No.14148 of 2011
and
M.P(MD)Nos.1 and 2 of 2011

S.Puravikallan ... Petitioner

vs.

1)The Deputy Registrar/Chief Revenue Officer,
The Trichirappalli District Central Co-operative Bank Ltd.,
No.1, Fort Station Road,
Trichirappalli.

2)The Manager,
The Trichirappalli District Central Co-operative Bank Ltd.,
No.1, Fort Station Road,
Trichirappalli.

3)The Special Officer,
The Trichirappalli District Central Co-operative Bank Ltd.,
No.1, Fort Station Road,
Trichirappalli. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the impugned charge Memo issued by him in his proceedings No.3799/03 C4 dated 20.05.2006 and additional impugned charge memo issued by the 2nd respondent vide his proceedings No.7184/03.04 A1 dated 10.11.2006 and impugned show cause notice issued by him in 3799/2003 (C4) A10 dated 20.12.2006 and quash the all as illegal and arbitrary and consequently direct the respondents to pay the retirement benefits to the petitioner with interest within the time limit that may be stipulated by this Honourable Court.

For Petitioner : Mr.G.Thalaimutharasu

For R1 & R2 : Mr.T.R.Janarthanam
Additional Government Pleader

For R3 : Mr.D.Shanmugaraja Sethupathi

ORDER

Learned counsel for the petitioner would submit that the petitioner, while serving as Assistant was subjected to disciplinary proceedings by issuance of two charge memos dated 20.05.2006 and 10.11.2006 respectively, issued by the respondents 1 and 2 respectively. The first charge memo dated 20.05.2006, contains three counts of charges. The petitioner on receipt of the first charge memo, submitted his detailed explanation, refuting all the charges. After sometime, he was also issued with the second charge memo dated 10.11.2006 containing two

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charges. The first charge contains four counts of allegations and the second charge contains two counts of allegations, for which, the petitioner submitted his detailed explanation on 01.12.2006.

2.Adding further, he would submit that not satisfied with the two explanations of the petitioner submitted to the two separate charge memos, the disciplinary authority appointed a common enquiry officer on 09.12.2006, to go into the correctness of the charges and explanations given by the petitioner. Finally, the enquiry officer, on completion of the enquiry, submitted his report dated 07.12.2006, with regard to the first charge memo dated 20.05.2006, holding that charge Nos.1 and 2 are proved, however, he held that the third charge is not proved. With regard to the second charge memo dated 10.11.2006, the enquiry officer has submitted his report dated 23.12.2006, holding that first charge containing four counts of allegations and the second charge containing two counts of allegations are proved, but the disciplinary authority has not passed any final order on both the two disciplinary proceedings.

3.He further submitted that in the meanwhile, the petitioner reached the age of superannuation on 31.12.2006 and the respondents also permitted him to retire from service, without prejudice to the pending disciplinary proceedings. Now, the petitioner has come to this Court, challenging the two charge memos dated 20.05.2006 and 10.11.2006 respectively, contending that even after a period of 9 long years from the date of submission of the reports dated 07.12.2006 and 23.12.2006 respectively, by the enquiry officer with regard to two charge memos namely, 20.05.2006 and 10.11.2006 respectively, the disciplinary authority has not chosen to pass final order on the two disciplinary proceedings initiated against the petitioner, as a result, he pleaded, the petitioner has been put to great prejudice.

4.Continuing his arguments, he would submit that in any event, the first charge memo dated 20.05.2006, ought not to have been issued to the petitioner, when the allegations in the first charge memo are related to the incident took place between 1999-2000 and 2003-2004 and that there is no explanation whatsoever by the respondents for the long delay in initiating the disciplinary proceedings. Similarly, in the second charge memo dated 10.11.2006, the allegations are related to the incident took place from 2000-2001 to 2003-2004, therefore, he pleaded, it is not proper on the part of the respondents to initiate disciplinary proceedings with unusual delay. From the above, it could be seen that there is a deliberate attempt to keep the petitioner under prolonged mental cruelty, therefore, it is pleaded, the charge memos issued by the respondents are liable to be quashed.

5.Mr.T.R.Janarthanam, learned Additional Government Pleader appearing for the respondents, urged this Court to dismiss the writ petition on two points. Canvassing the first point that in the light of the ruling rendered by the Larger Bench of this Court in ***K.Marappan vs. Deputy Registrar of Co-operative Societies, Namakkal,*** reported in ***2006 (4) CTC 689***, he submitted that no writ will lie against Co-operative Societies. Admittedly, in the present case, both the charge memos were issued by the Deputy Registrar and General Manager of the Co-operative Society, therefore, the petitioner has to work out his remedy before the

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forum which is statutorily contemplated under the provisions of the Tamil Nadu Co-operative Societies Act and not before this Court. Secondly, it was contended that the charge memo cannot be quashed on the sole ground of not passing the final order by the disciplinary authority, even after the receipts of the reports by the enquiry officer. In support the said contention, he relied on a judgment in ***K.Jayaraman vs. Superintendent of Police, Erode,*** reported in ***1995 (2) SCC 570,*** wherein, it has been held that unless a nexus is made out between the prejudice and the delay which has occasioned, whatever the delay either in initiating of proceedings or conduct of disciplinary proceedings would not result in preventing the disciplinary enquiry being conducted by merely pointing out the lapse of time.

6.Adding further, he would submit that in the present case, the question of indicating unnecessary harassment by the petitioner at the hands of the respondents, for not completing the disciplinary proceedings does not arise. The reason is, he was already permitted to retire from service on 31.12.2006 without prejudice to the pending proceedings and he was not retained in service, further, the respondents are waiting for a final order to be passed by the criminal court, hence, only for this genuine reason, final order could not be passed. Since some of the allegations on which the petitioner was found guilty, are related to serious charges of misappropriation of the society's funds, he pleaded that this Court without taking casual look at the delay point, may give a chance to the respondents, to pass a final order on the disciplinary proceedings initiated against the petitioner.

7.This Court finds merit in the submission made by the learned counsel for the respondents. As a matter of fact, although two charge memos dated 20.05.2006 and 10.11.2006 respectively, were issued, raising various allegations against the petitioner, the enquiry officer finally on completion of the enquiry, submitted his report dated 07.12.2006, with regard to the first charge memo dated 20.05.2006, holding that charge Nos.1 and 2 are proved, but held that the third charge is not proved. With regard to the second charge memo dated 10.11.2006, the enquiry officer has submitted his report dated 23.12.2006, holding that first charge containing four counts of allegations and the second charge containing two counts of allegations are proved. As rightly contended by the learned Additional Government Pleader appearing for the respondents, the petitioner was permitted to retire from service on reaching the age of superannuation on 31.12.2006, therefore, when the petitioner was not retained in service, he cannot have an apprehension of dismissal from service.

8.In the result, this writ petition is disposed of directing the respondents to make use of the two reports submitted by the enquiry officer, to pass final orders on the two disciplinary proceedings pending against the petitioner and such exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs. M.P(MD)Nos.1 and 2 of 2011 are closed.

Sd/
Assistant Registrar(W)

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Sub Assistant Registrar

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To

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The Trichirappalli District Central Co-operative Bank Ltd.,
No.1, Fort Station Road,
Trichirappalli.

+1cc to M/S.D.Shanmugaraja Sethupathi, Advocate in SR.No.41793
+1cc to M/S.G.Thalaimutharasu, Advocate in SR.No.41804

W.P(MD)No.14148 of 2011
03.08.2016

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