

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.09.2015

Coram

The Hon'ble Mr. Justice S.M.SUBRAMANIAM

W.P.No.789 of 2015

K.Krishnan

.. Petitioner

Vs

1.The Deputy Registrar of
Co-operative Societies,
Omalur Circle, Omalur,
Salem District.

2.S.420, Ramamoorthy Nagar Primary
Agricultural Co-operative Credit Society Ltd.,
Rep.by its President,
Ramamoorthy Nagar Post,
Omalur Taluk, Salem District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, calling for the records of the charge memo dated 08.10.2014 and consequential notice dated 21.11.2014 on the file of the 2nd respondent quash the same.

For petitioner ... Mr.M.S.Palaniswamy

For R1 ... Mr.L.P.Shanmugasundaram
Special Government Pleader (Co-Op.)

For R2 ... Mr.P.S.Sivashanmugasundaram

ORDER

The Charge memo issued to the writ petitioner in proceeding dated 08.10.2014 and the consequential notice dated 21.11.2014 issued by the second respondent are under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was appointed as a salesman in the second respondent Society in the year 1987 and promoted up to the level of Secretary on 23.08.1989. The Government issued G.O.Ms.No.55 Co-operation, Food and Consumer Protection Department dated 24.03.2000, holding that the

Secretaries of the Primary Societies were brought under the Common Cadre of services under Section 75 of the Tamil Nadu Cooperative Societies Act. The writ petitioner was placed under suspension by the then Special Officer of the second respondent Society in proceedings dated 26.07.2002. On initiation of disciplinary proceedings, a Charge memo was issued by the Special Officer on 23.08.2002. The petitioner submitted his explanation, denying the charges on 20.11.2002. After conducting the domestic enquiry, final order in the disciplinary proceedings was passed by the second respondent in proceedings dated 10.03.2003, imposing punishment of withholding of increments cut for five years with cumulative effects. On imposition of the punishment, the order of suspension was revoked and the petitioner was reinstated into the service in Order dated 11.03.2003. Once again on 14.01.2004, the writ petitioner was placed under suspension on account of the same set of charges by another Special Officer. In proceedings dated 30.04.2004, Charge memo was issued by the Special Officer. The writ petitioner was constrained to file W.P.No.23052 of 2004, challenging the order of suspension. An interim stay was granted against the order of suspension on 16.08.2004. Simultaneously, the writ petitioner filed W.P.No.36074 of 2004, challenging the order of Charge memo issued in proceedings dated 30.04.2004. Pursuant to the interim order of stay granted against the order of suspension dated 14.01.2004, the writ petitioner was reinstated in service on 31.12.2004. The W.P.No.36074 of 2004 filed by the petitioner, challenging the Charge memo was dismissed by this Court on 01.02.2006. During the pendency of the disciplinary proceedings and in view of the G.O.Ms.55, the Joint Registrar of Co-operative Society/Chairman Common Cadre Authority issued another suspension order in proceedings dated 22.12.2006, stating that the Charge memo will be issued separately by the Common Cadre Authority. However, without conducting a fresh enquiry, the Common Cadre Authority adopted the report of the domestic enquiry conducted earlier and issued notice on 25.01.2007. The writ petitioner submitted his explanations on 19.02.2007. Finally, the Joint Registrar/Common Cadre committee issued a final order, dismissing the services of the petitioner on 23.05.2007. The writ petitioner filed a revision petition under Section 153 of the Tamilnadu Co-operative Societies Act, before the Registrar of Co-operative Societies, Chennai on 11.08.2007. During the pendency of the revision petition filed by the writ petitioner, the Government issued G.O.Ms.122, Co-operative, Food and Consumer Protection Department, dated 04.07.2008, abolishing the Common Cadre Service. Thereafter, the revision petition was dismissed. The order of punishment was confirmed on 30.04.2010. Challenging the order of the revisional authority, the writ petitioner filed W.P.No.13346 of 2010 and the said writ petition was dismissed by this Court on 11.11.2011. The writ petitioner filed W.A.No.1173 of 2012 and the Hon'ble Division Bench of this Court allowed the

writ appeal on 09.06.2014 and directed the respondents to reinstate the petitioner in service and liberty was granted to the respondents to proceed afresh from the stage of issuance of the Charge memo.

3. In this contest, the second respondent issued a fresh Charge memo in proceedings dated 08.10.2014 and thereafter an enquiry notice on 21.11.2014, which are under challenge in this writ petition.

4. The learned counsel appearing for the writ petitioner made a submission that the Hon'ble Division Bench of this Court granted liberty to the respondents to proceed from the stage of the issuance of the Charge memo and therefore, the present Charge memo is unsustainable and further they have incorporated new set of charges in the impugned Charge memo dated 08.10.2014. At the outset, the learned counsel appearing for the writ petitioner submitted that an earlier proceeding was conducted by the Common Cadre Authority and the dismissal order was also issued by the Common Cadre Authority and the revision was dealt with by the Registrar of Cooperative Societies and the order was challenged in the writ petition and subsequently, the Hon'ble Division Bench decided the matter by setting aside the order of dismissal and remanding the case back for re-consideration. Under these circumstances, the second respondent is incompetent to issue the Charge memo containing certain new allegations. The learned counsel contended that as on the date of the issuance of G.O.Ms.122, Cooperative Food and Consumer protection Department dated 04.07.2008, the disciplinary proceedings were pending against the writ petitioner, since the revision petition filed before the Registrar under Section 153 of the Tamil Nadu Cooperative Societies Act was pending. Therefore, for all purposes, it is to be construed that it is a pending disciplinary proceeding contemplated under G.O.Ms.No.122. Thus, the second respondent herein has no jurisdiction to issue the Charge memo since it was a pending case and as per G.O.Ms.No.122, all the pending cases are to be continued only by the Common Cadre Authority and not by the disciplinary authority as of now.

5. In support of his contention, the learned counsel appearing for the writ petitioner relied on the judgment of the Division Bench passed in "P.Thangavel V. Chairman, Common Cadre Committee/Joint Registrar of Cooperative Societies, Namakkal Region, Namakkal and another", reported in "(2012) 3 MLJ 913" in paragraph 13, relevant in this regard is as follows:

"13. It is the contention of the learned Additional Government Pleader that in terms of G.O.Ms.No.122, Common Cadre Authority is entitled to continue with the disciplinary proceedings which were pending on the date when the Government Order was

passed. Hence Common Cadre Authority was entitled to proceed against the appellant. There cannot be any second opinion on the said issue as the Government Order empowers Common Cadre Authority to continue with the disciplinary proceedings which were pending on the date of issuance of Government Order in G.O.Ms.No.122 Cooperative Food and Consumer Protection Department dated 04.7.2008. However, that Government Order cannot be made applicable to the case of the appellant as the disciplinary proceedings ended in passing an order of dismissal as early as on 23.06.2007. That order was questioned successfully by the appellant and the Division Bench in its judgment dated 14.12.2007 allowed the writ appeal and set aside the order of dismissal with a further direction to the second Respondent to reinstate the appellant. Thereafter, of course, the Division Bench gave liberty to the Common Cadre Authority to proceed with the disciplinary proceeding afresh. If at all the common cadre authority could exercise its jurisdiction to proceed on the basis of the said direction, it could have been only prior to the issuance of Government Order in G.O.Ms.No.122 Cooperative Food and Consumer Protection Department dated 04.07.2008. The Division Bench judgment should be read only in that way. The Division Bench judgment cannot be relied upon by the second Respondent Society for tracing the jurisdiction of the Common Cadre Authority after 04.07.2008 when the charge memo was issue only on 09.09.2008. That charge memo is a fresh charge memo and it is not a continuance of the earlier proceedings. In that view of the matter, the charge memo dated 09.09.2008 initiated by the Common Cadre Authority after G.O.Ms.No.122 is also unsustainable."

In yet another case of "P.Kanagavel Vs. Additional Registrar of Cooperative Societies and others" in W.P.No.15177 of 2012 dated 21.09.2012, the learned Single Judge also has taken a view in this regard in paragraph 10 and 12 of the judgment, which is extracted herein:

"10. The second respondent is a Common Cadre Authority as per G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department dated 24.03.2000. The common cadre authority was abolished in G.O.Ms.No.122, Cooperation, Food and Consumer Protection Department dated 04.07.2008. While issuing G.O.ms.No.122, there is a savings clause in Clause 8. Clause 8 of G.O.Ms.122 is relevant and the same is extracted hereunder:

"8. In respect of cases which are pending till the date of issue of the order,

the cadre authority shall continue to deal with such cases till its finalisation."

12. The first respondent passed the order dated 10.02.2012, setting aside the order dated 04.06.2009 of the second respondent and remanded the matter back to the second respondent. In the remand order dated 10.02.2012, the first respondent has not made it clear as to whether the second respondent shall continue with the proceedings or 3rd respondent shall continue with the disciplinary proceedings and he just remanded the matter to continue with the disciplinary proceedings. While remanding the matter by order dated 10.02.2012, the first respondent deprived the back wages of the petitioner and directed the respondents 2 and 3 to reinstate the petitioner in service, but, the petitioner was deprived of the back wages."

Relying on the above judgments, the learned counsel appearing for the petitioner contended that the Court also has considered the Clause incorporated by the Government in G.O.Ms.No.122 and accordingly, the case on hand has to be dealt with by the Common Cadre Authority and not by the second respondent. This apart, the case of the writ petitioner was decided by the Hon'ble Division Bench in W.A.No.1173 of 2012 on 09.06.2014, wherein liberty was granted to the third respondent therein to initiate disciplinary proceedings afresh in terms of G.O.Ms.No.122, dated 04.05.2004. However, it is open to the appellants to raise all the defence in the disciplinary proceedings to be initiated by the third respondent therein afresh and accordingly, the order of dismissal was set aside. Pursuant to the order, the writ petitioner was reinstated.

6. The learned counsel appearing for the respondents opposed the contentions of the writ petitioner by stating that the Common Cadre Authority is no more in existence and the Government abolished the Common Cadre Authority in G.O.Ms.No.122 dated 04.07.2008 itself. The final order in the disciplinary proceedings initiated earlier in the year 2004 was concluded by the Common Cadre Authority by issuing the order of dismissal against the writ petitioner in proceedings dated 23.05.2007. Thus, for the purpose of adopting the Common Cadre, the order of Government abolishing the Common Cadre Authority was issued only on 04.07.2008 and the case of the writ petitioner was concluded by passing the final order in the disciplinary proceedings on 23.05.2007, one year prior to the abolition of the Common Cadre Authority. Thus, there is no question of proceeding the case of the writ petitioner by the Common Cadre Authority as on now will not arise at all. Further, the final order in the disciplinary proceedings was passed by the Common Cadre Authority on 23.05.2007 and a revision was filed by the writ petitioner on

11.08.2007 and the revision petition alone was pending and that will not provide an opportunity for the writ petitioner once again to claim that the fresh proceedings to be conducted by the Common Cadre Authority. The disciplinary proceedings are deemed to have been concluded after the issuance of the final order of the disciplinary authority. In this case, the disciplinary proceedings were concluded by passing the final order on 23.05.2007. Such being the factum of the case for all purposes, the disciplinary proceedings were concluded in respect of the writ petitioner in relation of the Charge memo of the year 2004, on 23.05.2007, and Common Cadre Authority was abolished on 04.07.2008. Thus, the case of the writ petitioner cannot be brought under the category of pending disciplinary proceedings as contemplated in G.O.Ms.No.122 dated 04.07.2008. The case on hand has to be taken as a completed disciplinary proceedings for the purpose of implementing the Clause in G.O.Ms.No.122 dated 04.07.2008. Thus, the arguments advanced in this regard by the learned counsel for the writ petitioner deserves no consideration.

7. Secondly, there is no quarrel with regard to the proposition laid down by the Hon'ble Division Bench of this Court in the case of "P.Thangavel V. Chairman, Common Cadre Committee/Joint Registrar of Cooperative Societies, Namakkal Region, Namakkal and another", reported in "(2012) 3 MLJ 913" in paragraph 13. The Hon'ble Division Bench considered the continuance of the disciplinary proceedings, which were pending at the time of issuance of G.O.Ms.No.122. Further, in the case on hand, the disciplinary proceedings were not pending as on the date of the issuance of the G.O.Ms.No.122 and therefore the question of continuance by the Common Cadre Authority will not arise at all. Thus, the findings of the Hon'ble Division Bench in this regard has no applicability in relation to the facts of the present case.

8. Thirdly, the order of the Division Bench passed in the case of the "P.Kanagavel Vs. Additional Registrar of Cooperative Societies and others" in W.P.No.15177 of 2012 dated 21.09.2012, the Court stated that with reference to G.O.Ms.55, in view of the fact that the earlier disciplinary proceedings against the writ petitioner was initiated by the Common Cadre Authority, by invoking the powers of the G.O.Ms.55, which was issued pursuant to the Section 55 of Tamil Nadu Co-operative Societies Act. However, Hon'ble Division Bench has not derived the method or the principles to be adopted for conducting a fresh departmental disciplinary proceedings and that is to be conducted in accord with the rules and the orders in force as on today. Thus, the order passed by the Hon'ble Division Bench in W.A.No.1173 of 2012 is of no avail to the writ petitioner in order to contest the Charge memo which is now issued and impugned in this writ petition.

9. This Court is of the firm opinion that no writ can be entertained against the Charge memo in a routine manner and the writ proceedings can be entertained challenging the Charge memo or show cause notice, only on exceptional circumstances. A Charge memo can be challenged on the ground of no jurisdiction, incompetency or on the allegations of mala fides or the same is in violation of statutory rules. Even, in case of raising allegations of mala fides, the authority, against whom, such an allegation is raised, has to be impleaded as a party in the writ petition in his personal capacity. In the case on hand, the learned counsel appearing for the writ petitioner states that the order impugned is in violation of the order passed by the Hon'ble Division Bench in W.A.No.1173 of 2012. The Hon'ble Division Bench, while dealing with the final order of dismissal, issued against the writ petitioner, came to the conclusion that there was no proper enquiry conducted and the domestic enquiry and the consequential proceedings were not in accord with the rules in force at that point of time. Taking that view, the Hon'ble Division Bench, while setting aside the order of dismissal, granted liberty to the respondents therein to initiate disciplinary proceedings afresh in terms of G.O.Ms.55 dated 24.03.2000. However, the present Charge memo was not issued in terms of G.O.Ms.55 dated 24.03.2000 and a new set of Charges were also incorporated in the impugned Charge memo. There is no bar in the disciplinary authority for incorporating a new set of charges or allegations if found against the writ petitioner and on the ground of incorporation of new charges, the writ petitioner cannot seek quashing of the Charge memo. It is left open to the writ petitioner to submit his explanation/objections and defend his case in accordance with law. Though the Hon'ble Division Bench has stated that initially disciplinary proceedings were initiated in terms of G.O.Ms.55 dated 24.03.2000, the said G.O. was abolished by issuing the G.O.Ms.No.122 Cooperative, Food and Consumer Protection Department dated 04.07.2008. In fact, as on the date of issuance of the Charge memo impugned in this writ petition, the G.O.Ms.No.55 was not in force and Common Cadre authority was not in existence. When the Common cadre authority itself was not in existence and the case of the writ petitioner was not falling under the category of pending cases as on 04.07.2008, the day in which G.O.Ms.No.122 was issued, there is no question of continuing the Charge memo impugned in this writ petition by Common Cadre Authority. The fact remains that disciplinary proceedings against the writ petitioner by the Common Cadre Authority was concluded by issuing the order of dismissal on 23.05.2007 itself, well before the abolition of the Common Cadre Authority. Thus, it is not a case falling under the Clause 3, the cases initiated by the Common Cadre Authority was pending. The disciplinary proceedings initiated by the Common Cadre

Authority against the disciplinary proceedings was concluded well in advance before the issuance of the G.O.Ms.No.122. Thus, the facts and circumstances in these aspects are to be considered, while deciding the present writ petition. While granting liberty, the reference made in respect of G.O.Ms.No.55, granting liberty to initiate fresh proceedings cannot be construed as if the disciplinary proceedings against the writ petitioner should be conducted only by the Common Cadre Authority. The Hon'ble Division Bench also never issued any direction to the Common Cadre Authority to proceed or initiate disciplinary proceedings by virtue of the power conferred in G.O.Ms.No.55. In the absence of any specific direction of the Hon'ble Division Bench, the facts relating to the case are to be considered, while considering the merits and quashing of the Charge memo, which is the prayer in this writ petition.

10. The writ petitioner has once again filed the present writ petition, challenging the very Charge memo by pleading that his case should be treated as pending case in accord with G.O.Ms.No.55 and in this contest the present writ petition is filed. However on analysing the facts and the circumstances, this Court is of the opinion that it is the case where the disciplinary proceedings were concluded by the Common Cadre Authority, even before abolition of the Common Cadre Authority. Such being the factum of the case, the Charge memo now issued cannot be dealt with under G.O.Ms.No.55 dated 24.03.2000, by the Common Cadre Authority, which is a body non-exist.

11. As on today, the Government abolished the Common Cadre Authority in G.O.Ms.No.122 dated 04.07.2008. Thereafter, the secretaries are also the employees of the respective Cooperative Society. The Cooperative Society registered under the Tamil Nadu Co-operative Society Act, 1983 is not a "state" within the meaning of the Article 12 of the Constitution of India. Thus, no writ petition can be entertained against the proceedings issued by the Co-operative Society. The remedy lies to the writ petitioner under the provisions of the Tamil Nadu Co-operative Societies Act. The Charge memo or the notice issued are the proceedings of the second respondent Co-operative Society, which is not in "state" with the meaning of the Article 12 of Constitution of India. Thus the writ petition at present is to be dismissed also on the ground of maintainability. Considering the factual circumstances and the nature of the order passed by the second respondent, this Court is of the opinion that even on merits, the case deserves no consideration and the order impugned was issued by the second respondent, Co-operative Society. Thus, on these two grounds, the writ petition is liable

to be rejected. Accordingly, the writ petition stands dismissed.
However, there is no order as to costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

gsa

To

1. The Deputy Registrar of Co-operative Societies,
Omalur Circle, Omalur,
Salem District.
 2. The President,
S.420, Ramamoorthy Nagar Primary
Agricultural Co-operative Credit Society Ltd.,
Ramamoorthy Nagar Post,
Omalur Taluk, Salem District.
- + 2 cc to Mr.M.S.Palaniswamy, Advocate,SR.65341
- + 1 cc to Mr.P.S.Sivashanmugasundaram, Advocate,SR.65698

W.P.No.789 of 2015

MG(CO)
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