

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1398 of 2014
& MP No.1 of 2014

The Joint Registrar of Co-operative Societies
Cuddalore Region,
Cuddalore

... Appellant/Respondent

versus

N.Ramalingam

... Respondent/Petitioner

Appeal filed against the order passed by this Court dated 02.07.2014 passed in W.P.No. 14769 of 2012.

Prayer in WP.No.14769/12: The Petition has come to this Court under Article 226 of the Constitution of India, challenging the impugned order passed by the respondent-Joint Registrar of Co-operative Societies, cuddalore region in R.C.No.2200/2011 dated 28/06/2011 E dated 28/06/2011 in end by which the petitioner Mr.N.Ramalingam, Co-operative Sub Registrar(Public Distribution System) Annagnaman, was placed undersuspension under sub Rule1 (E) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules until further orders, on the ground that a complaint against him of Criminal offence is contemplated relating to certain irregularities of Neyveli Co-operative Housing Society While he was working as co-operative Sub Registrar/Supervisor, Neyveli Co-operative Housing Society, by the Consequential order of even reference dated 30.06.2011 the petitioner was not permitted to retine on his reaching the age of superannuation viz 30.06.2011 and he was retained in service under fundamental Rule 56(1)c challenging both these orders this writ Petition has been filed.

For Appellant : Mr.L.P.Shanmugasundaram
Special Government Pleader(Co-Op)
For Respondent : Mr. M.S.Palaniswamy

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 02.07.2014 made in WP No.14769 of

2012, in and by which, the learned Single Judge allowed the Writ Petition quashing the proceedings of the appellant, viz. the Joint Registrar of Cooperative Societies, Cuddalore Region, dated 28.06.2011 and the consequential order dated 30.06.2011. By the order dated 28.06.2011, the appellant had placed the respondent under suspension, under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule, until further orders and by the consequential order dated 30.06.2011, the respondent was not allowed to retire on attaining superannuation and was retained in service under Rule 56 (1) (c) of the Fundamental Rules.

The Writ Petition came to be filed on the following factual backdrop:

2. The respondent was working as a Sub Registrar in the Cooperative Department. While so he was charged with certain delinquencies and the disciplinary enquiry was conducted. In the disciplinary enquiry, the respondent was exonerated from the charges and the Disciplinary Authority concluded that the respondent did not act with a criminal intent to create loss to the Society and therefore imposed a minor punishment of censure, the said orders have become final. The Disciplinary Authority also took note of the fact that the respondent had refunded a sum of Rs.81,902/-, which is said to have been the loss caused to the Society because of his inaction or negligence. The said disciplinary enquiry was concluded on 28.06.2011, unfortunately on the same day the impugned order suspending the respondent came to be passed by the Appellant.

3. The respondent was also not allowed to retire invoking Rule 56(1)(c) of the Fundamental Rules. The order dated 28.06.2011 came to be passed on the ground that a complaint against the respondent for a criminal offence is contemplated relating to the irregularities in Neyveli Cooperative Housing Society, while he was working as a Sub Registrar/Supervisor. The consequential order dated 30.06.2011 passed invoking Rule 56(1) (C) of the Fundamental Rules, discloses that he was not permitted to retire pending the criminal case. These orders were challenged before the learned Single Judge in the Writ Petition.

4. The respondent herein, who was the petitioner in the Writ Petition, mainly contended before the learned Single Judge that a disciplinary enquiry was conducted against him and he was absolved of the charges by the Disciplinary Authority and therefore, there was no ground for taking any criminal proceedings against him. It was also the further contention of the respondent before the Writ Court that there was no criminal investigation or trial pending against him, so as to enable the appellant to invoke Rule 56 (1) (c) of the fundamental Rules.

5. The learned Single Judge, who heard the Writ Petition accepted the contentions of the respondent and concluded that the orders passed suspending the respondent and also not allowing to retire cannot stand judicial scrutiny, in view of the fact that the respondent has already been absolved from the charges in the domestic enquiry and no criminal proceedings were pending on the date when the order came to be passed. The learned Single Judge also observed that even on the date when he disposed of the Writ Petition, no criminal proceedings were pending. On the above conclusions, the learned Single Judge allowed the Writ Petition quashing the orders passed under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as well as the Order not allowing the respondent to retire invoking Rule 56 (1) (c) Fundamental Rules.

6. Aggrieved the appellant are before us by way of this intra Court Appeal.

7. We have heard Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the appellant and Mr.M.S.Palaniswamy, learned counsel appearing for the respondent.

8. Mr.L.P.Shanmugasundaram, learned Special Government Pleader, appearing for the appellant would contend that the respondent is guilty of various delinquencies which caused financial loss to the Society. Therefore, a Criminal complaint was lodged by the Society and the same has been registered as an FIR on 27.08.2014. Therefore according to him, the invocation of Rule 56 (1) (c) (iv) of the Fundamental Rules is in order.

9. Per contra Mr.M.S.Palaniswamy, learned counsel appearing for the respondent would contend that in the disciplinary proceedings, the Disciplinary Authority had absolved the respondent of all the charges and it has been very clearly held that there was no criminal intent on the part of the respondent to cause loss to the society. It was concluded by the Disciplinary Authority that at best, it could be said that there was a certain amount of negligence on the part of the respondent, for which the punishment of censure was imposed on him. Mr.M.S.Palaniswamy would also point out that in fact no criminal proceedings was pending on the date when the respondent was suspended and was not allowed to retire. He would also point out that under Rule 56(1)(c)(iv) of the Fundamental Rules, a Government servant can be retained in service despite reaching the age of superannuation, if there is a complaint of criminal offence, which is under investigation or trial.

10. Pointing out that there was no complaint which was under investigation or trial on 28.06.2011 or 30.06.2011, when the orders impugned came to be passed and an FIR was registered

only after the disposal of the Writ Petition on 27.08.2014, Mr.M.S.Palanisamy, would contend that the appellant could not have invoked the Rules 56 (1) (c) of the Fundamental Rules.

11. We have considered the rival submissions. Admittedly, the respondent was charge sheeted for certain delinquencies and the departmental enquiry was held against him. The Disciplinary Authority came to the conclusion that the respondent was not guilty of the charges and taking note of the fact that he had reimbursed a sum of Rs.81,902/- which is claimed as a loss for the society had absolved him of all the charges by imposing the punishment of censure alone. The final order passed by the Disciplinary Authority on 28.06.2011 would show that the Disciplinary Authority has come to the conclusion that the respondent has not abetted the delinquent employees of the Society.

12. Apart from the above, there was no criminal complaint or investigation or trial, pending on the date when the orders impugned came to be passed. Admittedly an FIR was registered after the disposal of the Writ Petition by this Court on 27.08.2014 only. Therefore, we do not think that the learned Single Judge was wrong in allowing the Writ Petition in quashing the orders impugned in the Writ Petition. Rule 56(1)(c) of the Fundamental Rules, enables the Government to retain the employee, even after he had attained the age of superannuation, only when there is a criminal case under investigation or pending trial. The State cannot retain an employee, who has been found not guilty in the disciplinary proceedings in contemplation of a future complaint.

13. We are therefore of the considered opinion that the order of the learned Single Judge in allowing the Writ Petition does not called for the interference and the Writ Appeal is accordingly dismissed. However, in the circumstances, without costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

jv

To

The Joint Registrar of Co-operative Societies
Cuddalore Region,
Cuddalore

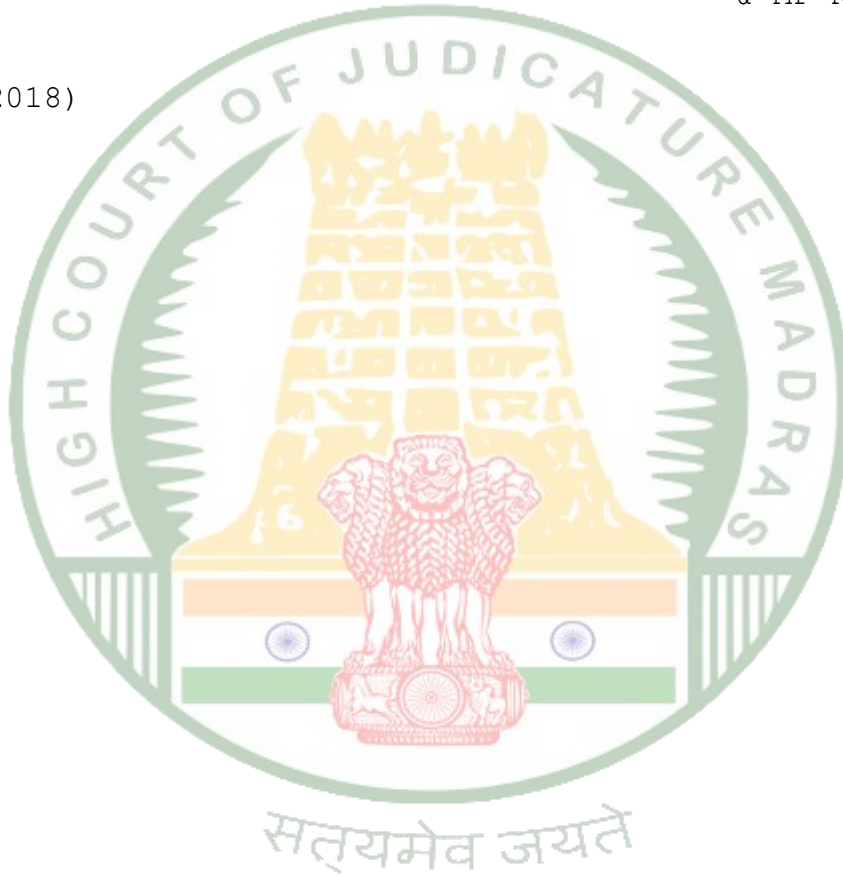
+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.49034

+1cc to Mr.M.Palanisamy, Advocate SR.No.48108

+1cc to Government Pleader SR.No.48509

W.A.No.1398 of 2014
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SKV(CO)
GN(21/08/2018)



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