

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE SATRUGHANA PUJAHARI

W.P.No.9837 of 2014 and M.P.No.1 of 2014

&

W.P.No.21042 of 2014 and M.P.No.1 of 2014

W.P.No.9837 of 2014

Ezhil Bharathi Petitioner

Vs

The Deputy Registrar of Co-opertive
Societies [Housing],
Chennai Region,
Chennai-17.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records on the file of the respondent herein in Proceedings Na.Ka.No.670/2014/A dated 21.03.2014 along with an erratum issued by the respondent in Na.Ka.No.670/2014/A dated 25.03.2014 and quash the same.

W.P.No.21042 of 2014

Ezhil Bharathi ... Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Secretariat, Chennai-9.

2.The Registrar of Co-operative Societies,
Chennai Region,
Chennai-10.

3.The Deputy Registrar of Co-opertive Societies [Housing],
Chennai Region,
Chennai-17

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 1st respondent herein to include the name of the petitioner in the ensuing panel for promotion to the post of Deputy Registrar of Co-operative Societies for the year 2013-2014, notwithstanding and without reference to Charge Memo issued in Proceedings Na.Ka.No.670/2014/A dated 21.03.2014 along with an erratum issued in Na.Ka.No.670/2014/A dated 25.03.2014 by the 3rd respondent herein and to promote her as such with all benefits.

For Petitioner : Mr.M.Ravi
in both WPs

For Respondents : Mr.L.P.Shanmugasundaram
in both WPs Special Government Pleader

C O M M O N O R D E R

Both these Writ Petitions have been preferred at the instance of the same petitioner, the first one challenging the issuance of a charge memo by the respondent against him vide Na.Ka.No.670/2014/A dated 21.03.2014 with a prayer to quash the same and the second one seeking a direction to the 1st respondent to include the name of the petitioner in the ensuing panel for promotion to the post of Deputy Registrar, Co-operative Societies for the year 2013-2014 notwithstanding the aforesaid charge memo issued along with an erratum on 25.03.2014.

2.The petitioner, who initially joined as Junior Assistant on compassionate ground, was promoted as Senior Inspector of Co-operative Societies in the year 1989. However, subsequently, she went on leave. Thereafter, without getting extension of leave, she remained absent and as such, as per G.O.Ms.No.1046, P&AR Department, dated 13.11.1987, which was amended as Rule 18 [3] of the Fundamental Rules, a proceeding was initiated against her for her unauthorised absence.

3.Inasmuch as, Rule 18[3] of Fundamental Rules prescribes for termination of service in such circumstances, the petitioner preferred an Original Application No.980 of 1995 before the Tamil Nadu Administrative Tribunal challenging the validity of the charge memo, wherein, the Tamil Nadu Administrative Tribunal, while deciding batch of cases along with the petitioner's case, invalidated such Rule prescribing termination and directed the respondent to proceed afresh against the petitioner.

4.Thereafter, without initiating a fresh proceeding, the Joint Registrar, Co-operative Societies [Housing], Chennai

continued the proceeding in the self same charge memo and held the petitioner guilty of the charge. However, the Joint Registrar, Co-operative Societies, taking into consideration the fact situation as well as the mitigating circumstances, imposed a minor penalty of stoppage of increment for 3 months without cumulative effect so also vide G.O.No.[D] No.93, Co-operation Food and Consumer Protection Department, dated 16.03.2004, on considering the proposals of the Head of the Department, i.e. Registrar of Co-operative Societies, regularised the services of the petitioner and treated her unauthorised absence from 01.07.1990 till 31.03.1992 as Extraordinary Leave relaxing the requirement of Medical certificate under Rule 18(2) of the Fundamental Rules, invoking the Rule 5-A of the said Rules.

5.As it appears that the petitioner after disposal of the Original Application in question by the Tamil Nadu Administrative Tribunal, made several representations for her promotion, so also, questioning the continuance of the proceeding of charge memo and thereafter, also indicating that the punishment imposed being a minor one as prescribed under Rule 17[a] of the Tamil Nadu Civil Services [Discipline & Appeal] Rules by the Joint Registrar of Co-operative Societies, the same is not a stigma to include her name in the Co-operative Sub Registrar's panel for promotion as on 01.05.1994. More so, in view of the fact that her unauthorised period of absence has been regularised as Extraordinary Leave by the Government relaxing the requirement under Rule 18[2] of the Fundamental Rules. After various communications and proceedings of the Registrar of Co-operative Societies and finally the Secretary to Government, vide Government letter No. 3568/CH1/2011-7 dated 11.01.2012, issued instruction to the Registrar of Co-operative Societies to take further action to include the name of the petitioner in the Co-operative Sub Registrar's panel as on 01.05.1994, wherein, it was pointed out that the Registrar of Co-operative Societies had no jurisdiction to proceed with the disciplinary proceedings and pass final orders, as the original charge memo was set aside by the Tamil Nadu Administrative Tribunal and requested the Registrar of Co-operative Societies to initiate a fresh action against the petitioner, apart from including her name in the Co-operative Sub Registrar's panel as on 01.05.1994. In spite of the same, no progress in this regard having been made, the petitioner preferred W.P.No.19330 of 2012 seeking a writ of Mandamus to the Registrar, Co-operative Societies to include her name in the panel of promotion as on 01.05.1994. On 20.12.2013, this Court allowed the said Writ Petition, in view of the letter No.3568/CH1/2011-7 dated 11.01.2012, wherein it has been clearly held that the order passed on 30.04.2001 by the Joint Registrar of Co-operative Societies is non-existent in the eye of law. The petitioner was given clean slate and was held entitled to get

her name included in the Co-operative Sub Registrar's panel, in terms of the instructions issued in G.O.Ms.No.368 P&AR [S] Department dated 18.10.1993 and in the Government letter No.90586/94-2 P&AR [S] Department dated 17.05.1995.

6.After disposal of the said Writ Petition, it appears, that the Registrar of Co-operative Societies, by proceeding dated 19.03.2014, issued an order including the name of the petitioner in the panel of Senior Inspectors fit for promotion as Co-operative Sub Registrar as on 01.05.1994, with due seniority in the list approved by the Registrar vide memo dated 31.03.1995 and restored her seniority and consequent upon the same, it was also held that inclusion of her name in the promotion panel to the post of Deputy Registrar of Co-operative Societies will be considered separately subject to suitability and eligibility.

7.Thereafter, without according her promotion as Deputy Registrar, after long lapse of 22 to 24 years from the alleged delinquency and the order of the Tribunal to proceed afresh, the charge memo impugned in the first Writ Petition was issued to her and she was not accorded promotion. The same has been challenged by the petitioner on the ground that when this Court has already held that the petitioner has a clean slate and her period of unauthorised absence has already been regularised, taking note of the order of the Tribunal, initiation of disciplinary proceeding at this belated stage, is nothing but actuated with malafide to block her promotion, hence unsustainable.

8.During the course of hearing, it is submitted by the learned counsel for the petitioner that when the delinquency of unauthorised absence has already been regularised by grant of Extraordinary Leave and she has also been accorded one promotion, thereafter, issuing a charge memo without considering her subsequent promotion is nothing, but digging a skeleton from the cupboard at this belated stage. No doubt, the Tribunal had given liberty to the Department to proceed afresh, but the petitioner was not proceeded afresh and from the date of order of the tribunal, more than 14 years have elapsed so also 20 years have elapsed for the alleged delinquency, hence such delay in initiation of the proceeding itself vitiates the departmental proceeding. Therefore, the same is liable to be quashed, submits the counsel for the petitioner.

9.In response, learned counsel appearing for the respondents submit that the same being pursuant to the order of the Tribunal and also subsequent direction of the Government as stated earlier, to proceed afresh while setting aside the punishment imposed, the same cannot be found fault with.

10. Needless to say that the Tribunal had given liberty to the department to proceed afresh, but the authority proceeded with self same charge and a minor punishment was imposed on the petitioner. The Government, however, set aside the same and directed to proceed against the petitioner afresh as the same was not in accordance with the direction of the Tribunal. However, in the meanwhile, more than 20 years from the alleged delinquency has elapsed. The delinquency is one of unauthorised absence, which has also been regularised by grant of Extraordinary Leave. The petitioner has already been accorded one promotion, in spite of such prior delinquency. This Court had also held that there was no impediment to grant promotion to the petitioner, in view of the order of the Government continuance of the disciplinary proceeding was not in accordance with the Tribunal order. In such premises, issuing a charge memo for the self same delinquency at this belated stage, before the petitioner's next promotion, can very well be said to be actuated with malafide. The delinquency also not serious in nature and unauthorised absence, which has been regularised as Extraordinary Leave.

11. Therefore, this Court is of the view that issuance of charge memo to the petitioner at this stage, cannot be sustained. More so, in view of the inordinate delay in initiation of action against the petitioner in terms of the order of the Tribunal. Hence, this Court allows the writ petitions and quashed the charge memo issued against the petitioner which is impugned herein. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Secretary to Government,
Government of Tamil Nadu,
Co-operation, Food and Consumer Protection Department,
Secretariat,
Chennai-9.

2.The Registrar of Co-operative Societies,
Chennai Region,
Chennai-10.

3.The Deputy Registrar of Co-opertive Societies [Housing],
Chennai Region,
Chennai-17.

+1 cc to the Government Pleader sr 29971
+1 cc to Mr.Ravi Advocate sr 29592

W.P.Nos.9837 & 21042 of 2014

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