

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.07.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22117 of 2013

and

M.P.No.1 of 2013

M.Manoharan

.. Petitioner

Vs

The Administrator/Joint Registrar of Co-operative Societies,
Villupuram District Central Co-operative Bank,
Hospital Road, Villupuram.

... Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the entire records relating to the impugned order passed by the respondent in his proceedings Na.Ka.No.7147/2011/E-1(6), dated 25.09.2012 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.R.Arumugam

O R D E R

The second show cause notice issued by the respondent for providing an opportunity to the writ petitioner to submit his explanation on the enquiry report is under challenge in this writ petition.

2.The show cause notice was issued by the Special Officer of a Cooperative Society in proceedings dated 25.09.2012. The writ petitioner was an employee of the Villupuram District Central Cooperative Bank and on account of certain allegations, which all are serious in nature, the disciplinary proceedings were initiated and a domestic enquiry was conducted. The writ petitioner participated in the process of enquiry and the enquiry officer submitted his final report for the consideration of the disciplinary authority. The Special Officer, who is the disciplinary authority of the Central Cooperative Bank, issued the show cause notice enclosing the copy of the enquiry report to the writ petitioner seeking his explanation on the findings in the enquiry report. Instead of submitting his explanation/objections to the enquiry report, the petitioner has moved the present writ petition challenging the very show cause notice itself.

3.The learned counsel for the petitioner contended that the writ petitioner has already attained the age of superannuation and therefore, no action can be taken against the writ petitioner. Further, he could not able to establish that the writ petitioner was allowed to retire from service for the purpose settling the terminal and other pensionary benefits.

4.This Court is of an opinion that relieving an employee from the post on attaining the age of superannuation is one aspect of the matter and allowing an employee or permitting an employee to retire from service with all benefits is another one. However, there is a difference between the order of relieving and an order allowing to retire from service with all terminal and pensionary benefits. In a non-pensionable service, it is necessary for the management/employer to relieve an employee from the post on the last date of his retirement. However, what is important is that the management allowed such an employee to retire from service or not. Only if an employee is allowed to retire in all respects, enabling him to get his terminal benefits, otherwise, it is to be construed that the employer-employee relationship continues for the purpose of concluding the disciplinary proceedings. Unlike a Government service, there are rules in force to initiate action against a Government servant after the retirement. Even thereafter, the pension rules provides certain actions shall be initiated even against a retired employee. In the absence of any such specific rules in force, it is to be construed that, whether an employee is allowed to retire from service or not. Otherwise, the employee concerned is liable to face the disciplinary proceedings in all respects and only on conclusion of the same, he would be entitled to get the terminal and pensionary benefits as per the rules in force.

5.In the event of interpreting the rules in a way that soon after attaining the age of superannuation, an employee-employer relationship ceases, then the situation would be dangerous. Every such employee, who are tempted to commit mistake, may commit misconduct during the fag end of his retirement and escape from the clutches of Law. It is the human tendency that if there is an assurance that there is any possibility of any penal action, then they will be tempted to commit such offences in the public institutions. In a growing world of corruption, the employers and the Courts are to be cautious by interpreting the possible circumstances and the mindset and the attitude in the employees at large and to ensure that the interest of public is protected and the public institutions are protected in all respects.

6. Under these circumstances, a blunt interpretation that soon after the date of retirement, an employee is not liable for any disciplinary action is certainly unacceptable and a dangerous proposition. The Hon'ble Supreme Court of India also interpreted that a person, who commits a misconduct or a crime can never be allowed to escape from the clutches of penal provisions and the disciplinary rules. Therefore, while providing interpretation in such circumstances, a pragmatic approach is certainly required and the rule of constructive interpretation is to be adopted, so as to see that an employee who commits a misconduct or corrupt activities in public institutions is not allowed to escape from law without facing the enquiry or the disciplinary proceedings.

7. In the present case, it is only the show cause notice, which is challenged in this writ petition. No writ can be entertained against a show cause notice in a routine manner. A writ against a show cause shall be entertained, if the same has been issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or in the same is in violation of the statutory rules in force.

8. Intermittent intervention in departmental disciplinary proceedings are not preferable. The disciplinary proceedings initiated against an employee shall be concluded in all respects within a reasonable period of time. Prolonged pendency of disciplinary proceedings is not preferable. Pendency of disciplinary proceedings will certainly affect the service prospects of an employee. Pending disciplinary proceedings is a bar for promotion and for other benefits.

9. Judicial review in such circumstances are to be exercised sporadically and in all other circumstances, the employee aggrieved from and out of the final orders passed by the disciplinary authority is bound to approach the Appellate authority under the rules in force. This Court is of an opinion that in normal circumstances, any employee affected from and out of an final order passed by the disciplinary authority is bound to file an appeal before the Appellate authority under the rules in force. It is not as if, the High Court can entertain the writ petition against the original order in all circumstances

10. Under these circumstances, it is left open to the writ petitioner to submit his explanation/objections on the enquiry report and it is for the disciplinary authority to consider the materials available on record, take a decision and pass final orders in the disciplinary proceedings as early as possible.

11. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Administrator/Joint Registrar of Co-operative Societies,
Villupuram District Central Co-operative Bank,
Hospital Road, Villupuram.

+1cc to M/s.C.Prakasam, Advocate Sr.NO.43911

+1cc to M/s.R.Arumugam, Advocate SR.No.43853

CNR(CO)

sm:26.7.2018

W.P.No.22117 of 2013



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