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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.13818 of 2017

M.Anbalagan .. Petitioner

Vs.

1.The Secretary to the Government,
Food and Co-operation,
Fort St. George,
Chennai – 600 009.

2.The Registrar of Co – Operative Societies,
Office of the Registrar of Co – Operative Societies,
N.V.N. Malligai,
Kilpauk,
Chennai – 600 010.

3.The Regional Joint Registrar of Co-operative Societies,
Multistoried Building, Kajamalai,
Trichy – 20.

4.The Deputy Registrar of Co-operative Societies,
College Road,
Vadugapatti,
Musiri Taluk,
Trichy District. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents resulting in the 4th respondent's Impugned charge memo dated 23.06.2014 issued in Na.Ka.No.3314/2013/Sa.Pa. and consequential proceedings of the 3rd Respondent in Rc.No.2831/17/OM, dated 27.06.2017 served on 30.06.2017 in not permitting the petitioner to retire from service and quash the same and to direct the Respondents to permit the petitioner to retire from service on attaining the actual age of superannuation i.e., from 30.06.2017 and to pay all attendant, monetary benefits, back wages and all other retiremental benefits including DCRG and regular pension etc., and further treat the suspension periods as duty and also to pay full salary for the period from 23.05.2014 to 30.06.2017.

For petitioner : Mr.V.R.Venkatesan
For respondents : Mr.Jeyakumar
Additional Government Pleader

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ORDER

The petitioner joined the Co-operative Department as Junior Inspector of Co-operative Societies in the year 1985. He was promoted as Senior Inspector of Co-operative Societies in the year 1995 and thereafter, in the year 2008, he was promoted as Co-operative Sub Registrar and posted in Trichy Region. During the year 2014, he was holding Additional Charge as Special Officer for a number of Societies. While so, some misappropriation took place in Thulaiyanatham Primary Agricultural Co-operative Credit Society. In this regard an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was ordered. The enquiry report was submitted on 02.05.2014. A copy of the said enquiry report is enclosed in the typed set of papers. It is a very elaborate report running to more than 300 pages. The enquiry officer has not implicated the petitioner at all in his report. Further, surcharge proceedings were initiated against the petitioner. However, those proceedings were set aside by order dated 06.04.2017 in C.R.P.(MD) Nos.947 and 948 of 2016. Hence, the petitioner has come forward with this writ petition, challenging the impugned charge memo dated 23.06.2014 issued in Na.Ka.No.3314/2013/Sa.Pa. issued by the fourth respondent and the proceedings in Rc.No.2831/17/OM, dated 27.06.2017, issued by the 3rd Respondent.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3.The learned counsel appearing for the petitioner submits that till date the order dated 06.04.2017 passed by this Court in the aforesaid C.R.Ps. has not been set aside.

4.Now, the only question to be gone into is when the surcharge proceedings initiated against the petitioner were quashed by this Court, whether the petitioner can be proceeded against with the charge memo on the same set of facts.

5.It is to be noted that the proceedings under Section 81 of the Co-operative Societies Act, 1983 does not implicate the petitioner. Further, the surcharge proceedings issued under Section 87 of the Co-operative Societies Act, 1983 stood quashed by this Court on 06.04.2017 in C.R.P.(MD) Nos.947 and 948 of 2016. The charge memo was issued based on the surcharge proceedings, which came to be quashed by this Court. Since the very basis for the charge memo does not exist, the petitioner cannot be proceeded with the charge memo on the same set of facts.

6.A Division Bench of this Court in ***P.R.Govindarajan v. Asst. Director of Fisheries [2002 (4) L.L.N. 486]*** held as follows:

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"5. On a perusal of the charge-sheet, dated September 13, 1991, we find that based on

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> the report of the earlier surcharge proceedings, the petitioner was charged with the misconduct of having acted in concert with his co-employees, and indulged in defalcation of accounts, and thereby, committed misappropriation of society's funds. The alleged malfeasance were stated to have been committed during the period 1980-81 and 1981-82. On a perusal of the proceedings of the Deputy Director of Fisheries Department, Coimbatore, dated October 21, 1999, we also find that in the said proceedings the Deputy Director, on detailed analysis of all the material evidence placed before him, found that there was no scope for imposing any surcharge on the concerned employees. Accordingly, he held that the earlier surcharge proceedings, dated September 7, 1991, cannot be sustained. When such a definite conclusion was ultimately reached by the Deputy Director in his proceedings, dated October 21, 1999, the charges levelled against the petitioner in the charge-sheet, dated September 13, 1991, cannot also stand, since each and every one of the charges framed in the said charge-sheet was based on the surcharge proceedings, initiated on November 12, 1983 which was restated in the fresh surcharge proceedings, dated September 7, 1991. Since the very basis of the issuance of the charge-sheet, dated September 13, 1991, did not exist after the proceedings of the Deputy Director, dated October 21, 1999, the first respondent cannot be permitted to proceed with the charge-sheet dated September 13, 1991, issued to the petitioner."

7.In view of the above said facts and circumstances of the case and following the above said decision of the Division Bench of this Court, this Court is of the view that the impugned charge memo is liable to be quashed.

8.It is fairly submitted by the learned counsel appearing for the writ petitioner that a criminal case has been registered against him and to quash the same, he had filed a petition under Section 482 Cr.P.C. and order has been reserved in the case. Therefore, the question of permitting the petitioner to retire from service and disbursement of terminal benefits would arise only after the criminal cases are over. Since as on date the Criminal proceedings are pending, this Court is not in a position to permit the petitioner to retire and award the terminal benefits to the writ petitioner and the said issues are left open.

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9. In view of the above, the Writ petition is partly allowed and the impugned charge memo issued by the 4th respondent dated

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23.06.2014 issued in Na.Ka.No.3314/2013/Sa.Pa. alone is quashed. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To:

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4.The Deputy Registrar of Co-operative Societies,
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Musiri Taluk,
Trichy District.

+ 1 CC TO Mr.V.R.VENKATESAN, ADVOCATE IN SR No. 52686

SJ
TE/SKN-RSK/SAR-3 : 07/03/2018 : 4P/6C

ORDER MADE IN
W.P. (MD) No.13818 of 2017
01.03.2018

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