

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.12016 of 2008

M.R.Balashanmugam

.. Petitioner

Vs.

1.State of Tamil Nadu
rep. by its Secretary to Government
Co-operation, Food & Consumer
Protection Department
Fort St. George, Chennai-600 009.

2.The Registrar of Co-operative Societies
No.170, E.V.R. Periyar High Road
Kilpauk, Chennai-600 010.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the entire records relating to the impugned disciplinary proceedings vide the charge memo issued by the 1st respondent in his Letter No.11095/CD.1/2003-6, dated 14.06.2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and consequential orders of punishment issued by the 1st respondent in G.O.(Ms)No.20, dated 31.01.2008 and quash the same as null and void without jurisdiction and authority.

For Petitioner : Mr.K.Premkumar

For Respondents : Ms.T.Girija
Government Advocate (Co-op.)

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for entire records relating to the impugned disciplinary proceedings vide charge memo issued by the 1st

respondent in his Letter No.11095/CD.1/2003-6, dated 14.06.2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and consequential orders of punishment issued by the 1st respondent in G.O.(Ms)No.20, dated 31.01.2008, quash the same as null and void without jurisdiction and authority.

2.The petitioner was working as Co-operative Sub-Registrar appointed by the 2nd respondent in Co-operative Department. The petitioner was deputed to work as Special Officer of the Periyar District Co-operative Agro Service Society by the Registrar of Agro Engineering Services, Chennai-35. While he was working as Special Officer, the 1st respondent initiated disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, alleging that the petitioner has caused loss to the tune of Rs.11,22,050/- in purchasing the land for the said Society. The petitioner submitted his explanation dated 23.03.2005 to the charge memo denying the charges. The 1st respondent, not being satisfied with the explanation given by the petitioner, has appointed Enquiry Officer. The 1st respondent on receipt of enquiry report, by the proceedings in G.O.Ms.No.20, dated 31.01.2008, imposed punishment of stoppage of increment for a period of two years with cumulative effect, affecting his pension and including leave period. Challenging the order of punishment, the petitioner has come out with the present writ petition.

3.The learned counsel appearing for the petitioner contended that the charges levelled against the petitioner relates to alleged misconduct while he was working as Special Officer in the Co-operative Society. In view of the same, the petitioner is not a Government servant and the charge framed by the 1st respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is without jurisdiction and is not maintainable. The petitioner worked as Special Officer in a Co-operative Society. He is not a Government servant, he is only a private person, he was not discharging the duties of the State and therefore, Tamil Nadu Civil Services (Discipline and Appeal) Rules are not applicable to the petitioner. The Registrar of Co-operative Society alone has power to initiate proceedings against the petitioner as he was discharging the duties as per the provisions of the Tamil Nadu Co-operative Societies Act. The Deputy Registrar of Agro Engineering Services, Chennai, has initiated surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, by the proceedings dated 05.09.2003 for the alleged loss caused to the Society, which amounts to double jeopardy and prayed for quashing the impugned order. In support of his contentions, the learned counsel relied on the following judgments of the Hon'ble Apex Court:

(i) (2004) 5 SCC 263 (Dr.Gurjeewan Garewal vs. Dr.Sumitra Dash and others);

"12.At the outset it is to be mentioned that Article 311 cannot be automatically invoked in all the instances where a person is not given an opportunity of hearing. Article 311 confers certain safeguards upon persons employed in civil capacities under the Union of India or a State. Only persons who are holding "civil posts" can claim the protection provided under Article 311. The 1st respondent could claim the protection of Article 311 only if she holds a 'civil post'. A Constitution Bench of this Court in State of Assam v. Kanak Chandra AIR 1967 SC 884 has explained the meaning of 'civil post'. Here it was held that:

"There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. a civil post means a post not connected with defence outside the regular services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. ... There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is a relation between the State and the alleged holder of a post."

(ii) (2009) 3 SCC 439 (Mahavir singh v. Khiali Ram and others);

"12. Although the post of Lambardar is governed by the provisions of the Punjab Land Revenue Act and the Rules framed thereunder, holder of the said post is not a government servant. He does not hold a civil post within the meaning of Article 309 of the Constitution of India. He although is paid a sum of Rs. 500/- as a

fixed sum but his main income is the amount of commission which he receives out of the amount of revenue collected. Apart from collection of revenue, he has other functions to perform including rendition of assistance to an investigating officer when a crime is committed in a village."

4. The Deputy Secretary to the Government of Co-operative Department filed counter affidavit on behalf of the respondents and denied various averments made by the petitioner. The learned Government Advocate appearing for the respondents contended that the petitioner was appointed as Co-operative Sub-Registrar in Co-operative Department and he is a Government servant. Hence, the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are applicable to the petitioner. As per the provisions of Rule 9 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the 1st respondent is empowered to initiate disciplinary proceedings against the petitioner. The domestic enquiry was conducted as per the rules and regulations following the principles of natural justice. The disciplinary proceedings initiated and punishment imposed by the 1st respondent against the petitioner are valid and legal and prayed for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. From the materials available on record, it is seen that the petitioner was appointed as Co-operative Sub-Registrar in Co-operative Department and therefore, he is a Government servant. He was deputed to work as Special Officer in Periyar District Co-operative Agro Service Society. The petitioner does not cease to be a Government servant on deputation to a Co-operative Society. He continues to be a Government servant and the 1st respondent has power to initiate disciplinary proceedings against the petitioner. When a Government servant is sent to a foreign service i.e., deputation to a Co-operative Society, the Government does not lose its right to take disciplinary proceedings against its employees like the petitioner. The 1st respondent is the ultimate authority to impose punishment on the petitioner. Considering the facts of the above case, if the contention of the learned counsel for the petitioner is accepted, the 1st respondent as well as 2nd respondent cannot take any disciplinary proceedings against the petitioner. This issue was considered by this Court in the judgment reported in 2007 (3) MLJ 581 (J.Sudarsan vs. State of Tamil Nadu), wherein in para-3 and 4, it has been held as follows:

"3. There is a fallacy in the said argument. Rule 16 is an enabling provision by which, for a Government servant whose services are lent to foreign service under the rule, the borrowing authority themselves are also empowered to initiate disciplinary action. By the aforesaid rules framed under Article 309, the Government does not denude itself of (its power of) taking disciplinary action against (its) (sic) own Government servants. Even otherwise, if the rules are read in a proper context, ultimately if any capital punishment has to be imposed on the petitioner, the entire file will have to go before the first and second respondents. Therefore, the argument based upon Rule 16 is misconceived.

4. So long as the petitioner is a Government servant and the power to impose final punishment vests on the Government, it also enables the power to frame charges and proceed with the enquiry. Therefore, the argument that the second respondent has no power is hereby rejected. "

The said order is squarely applicable to the facts of the present case. Further, the petitioner has not challenged the authority of the 1st respondent to frame charges at the earliest and participated fully in the domestic enquiry. In view of the order of this Court dated 23.08.2013 made in W.P.Nos.14837 and 23241 of 2013 (M.Rajamanickam v. State of Tamil Nadu) as well as the judgment of this Court reported in 2007 3 MLJ 581 (J.Sudarsan vs. State of Tamil Nadu), the contentions of the learned counsel appearing for the petitioner that the 1st respondent has no power to initiate disciplinary proceedings against the petitioner and the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are not applicable to the petitioner, are without merits. The contention of the learned counsel appearing for the petitioner that the 1st respondent has initiated disciplinary proceedings against the petitioner and also the surcharge proceedings were initiated against the petitioner and others for the recovery of the amounts from the petitioner for the alleged loss is double jeopardy, is untenable. The learned Government Advocate appearing for the respondents contended that the complaint was given to CCW and a criminal case was registered against the petitioner and others and trial has commenced. The disciplinary proceedings, surcharge proceedings and criminal proceedings are independent of each other and it is open to the authority to initiate all the three proceedings simultaneously and the said action of the authority is valid and legal. The judgments relied on by the learned counsel appearing for the petitioner are not

applicable to the facts of the present case.

7. In the result, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.State of Tamil Nadu
rep. by its Secretary to Government
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2.The Registrar of Co-operative Societies
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Kilpauk, Chennai-600 010.

+1cc to Mr.K.Premkumar Advocate, S.R.No.57526
+1cc to the Government Pleader(CO-OP), S.R.No.58543

AD(CO)
CB(23/09/2019)

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