

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2019
CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P.No.32561 of 2018 and
W.M.P.Nos.37763 & 37764 of 2018

K. Velusamy

.. Petitioner

Vs.

1. State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
Secretariat, Chennai - 600 009.
2. The Registrar of Co-operative Societies,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010. .. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus to direct the first respondent to forthwith issue posting on promotion to the petitioner as Deputy Registrar of Co-operative Societies on promotion pursuant to the G.O.(3D) No.7, Cooperation, Food and Consumer Protection (CD1) Department dated 21.05.2018 issued by the first respondent subject to the outcome of the Disciplinary Proceedings.

For Petitioner : Mr.M.Ravi
For Respondents : Mr.L.P.Shanmugasundaram
Special Govt. Pleader (Co-op.)

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Mandamus seeking direction to the first respondent to forthwith promote the petitioner as Deputy Registrar of Co-operative Societies pursuant to G.O.(3D) No.7, Cooperation, Food and Consumer Protection (CD1) Department dated 21.05.2018, which would be subject to the outcome of the disciplinary proceedings.

2. The petitioner was appointed as Junior Inspector of Co-operative Societies in the year 1982. After various promotions, now he has been working as Co-operatives Sub-Registrar. A charge memo dated 04.05.2009 was issued by the 2nd respondent. The petitioner challenged the charge memo before this Court by way of Writ Petition in W.P.No.14503 of 2009 and this Court directed the respondents to complete the enquiry within a period of six

months. The period of six months is over by 17.01.2012. Thereafter, as the enquiry was not completed within a period of six months, the charge memo was quashed by the learned single Judge in W.P.No.32143 of 2013 dated 20.03.2014. Thereafter, the matter was taken up on appeal before the Division Bench. The Division Bench, while dealing with the charge, directed the appellants to take immediate steps to complete the enquiry proceedings within a reasonable time, as it is stated across the bar that the respondent is also likely to retire in the very near future. It is the grievance of the petitioner that the enquiry is not yet completed and hence the petitioner has filed the present writ petition seeking appropriate relief.

3. The report submitted by the learned counsel for the respondents needs to be looked into. The gist of charges as stated in the report reads as under:-

i) He has committed serious violation of the conditions laid down by the Registrar of Cooperative Societies (Housing) Chennai, while forming housing scheme, viz., a) V.S.Mani Nagar Ring Road Housing Sector at Madhavaram b) Sri Range Cooperative Nagar Lion Grand Village near Vadaperumbakkam Village and c) Thiruverkadu Coop Nagar by the Perambur during 1997-1999.

ii) He has committed serious violations of the conditions laid down by the Registrar of Cooperative Societies (Housing) Chennai while forming housing scheme in a) Mahabalipuram Coast line Green Village farm house scheme b) Perumbakkam scheme c) Sholinganallur Coop Mahanagar Annexure Housing Scheme and d) Vadaperumbakkam scheme by the Gandhinagar Coop Housing Society during 1997-99.

iii) He has committed serious violations of the conditions laid down by the Registrar of Cooperative Societies (Housing) Chennai while forming housing scheme a) Ambattur Coop Nagar b) Sri Gajalakshmi Nagar, Manimangalam Village c) Sri Dhanalakshmi Coop Nagar phase I and II d) Astalakshmi Coop Nagar by the Mambalam Kasi Viswanathan Coop Building Society during 1997-99.

4. The report also contains the requests made by the petitioner herein, the relevant portion of which is extracted below:-

"Now in the correspondence, the individual Thiru

K.Velusamy had given the following representations to the Principal Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai.

1. Letter dated 05.10.2018 requested that the above charge memo issued may kindly be converted under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.
2. Letter dated 06.10.2018 requested that the present enquiry officer Thiru G.Ravikumar, Joint Registrar of Cooperative Societies may be changed and an officer in the cadre of IAS Officer may be appointed to take up the enquiry together in a common proceedings in accordance with Rule 9A of the said Rules.
3. Letter dated 01.11.2018 requested that the impugned charge memo may please be quashed / dropped since it is erroneous and with mistakes of identity and facts and issued with malafide intentions."

5. The report reveals that the enquiry officer has conducted oral inquiry on 16.10.2018 and 29.11.2018 and the enquiry is going on. The enquiry officer has been instructed to conduct the enquiry and submit the enquiry report in a stipulated time and a position report has been submitted to Government vide letter dated 08.11.2018.

6. Learned counsel appearing for the petitioner would submit that pending enquiry, the petitioner has to be promoted and the main aim of the disciplinary proceedings initiated is only to stall the promotion of the petitioner. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of State of Punjab and Others Vs. Chaman Lal Goyal reported in (1995) 2 Supreme Court Cases 570, wherein at paragraph No.12, the procedure to be followed in cases of promotion has been indicated.

7. This Court wishes to point out that the dates and events as mentioned below would clearly go to show that prolonged suspension/enquiry is not warranted in the facts and circumstances of the present case. The details of allegations made against the petitioner, as detailed in page No.6 of the additional typed set of papers, is extracted below:-

Description	Allegation-1	Allegation-2	Allegation-3
Date of Proceedings issued by Registrar of Co-operative Societies, in which the Applicant/ Respondent is accused of violating the conditions incorporated therein.	12/08/1998 01/06/1999 & 29/11/2000	17/09/1998 29/10/1999 20/04/2001 25/03/1998	29/10/1999 01/11/1999 19/04/2001 19/04/2001
Period of Tenure of the Applicant/ Respondent in which he is alleged to have violated conditions in the aforesaid Circulars	(i) 31/10/1995 to 06/04/1998 (ii) 06/04/1998 to 31/07/1998 (iii) 40 days from 07/06/2001 to 27/07/2001 & 26/11/2001	(i) 19/03/1997 to 31/07/1998 (ii) 01/08/1998 to 31/08/1998	(i) 19/03/1997 to 31/07/1998 (ii) 01/08/1998 to 31/08/1998
Remarks: Allegation - 1	(i) & (ii) None of the proceedings mentioned under Allegation-1 will be applicable to the Applicant/ Respondent for his tenure of service as Special Officer from 31/10/1995 to 06/04/998 and as Secretary from 06/04/1998 to 31/07/1998, as all the proceedings were issued only subsequent to the said period. (iii) The period of 40 days from 07/06/2001 to 27/07/2001 and the single date 26/11/2001, the Applicant/Respondent cannot be accused of any violation during the short tenure and more importantly as the Scheme itself got completed on itself.		

Allegation - 2	(i) None of the proceedings except proceedings dated 25/03/1998 are applicable to the Applicant/Respondent, as the other three proceedings were issued only after completion of his tenure of service as mentioned in Allegation-2. While five Conditions had been imposed in Proceedings of the Registrar (Housing) dated 25/03/1998, none of the Conditions are related any of the 8 violations, specifically pointed out in Allegation-2. Thus, none of the allegations are related to the Applicant/Respondent.
Allegation-3	(i) The Proceedings issued by the Registrar of Co-operative Societies, Chennai, the violation of which the Applicant/Respondent is accused of in Allegation-3 are dated 29/10/1999, 01/11/1999, 19/04/2001 and 19/04/2001 and obviously none of these proceedings could be made applicable to the Applicant/Respondent, as his tenure of service itself 31/08/1999. Thus, none of the allegations are related to the Applicant/Respondent.

8. Considering the facts and circumstances, this Court is of the view that a person cannot be placed under prolonged enquiry for a period of nine years despite the learned single Judge passing an order directing the respondents to complete the enquiry within a period of six months and also the Division Bench directing the respondents to complete the enquiry in view of the retirement of the petitioner. In similar facts and circumstances, this Court has, in the order dated 19.09.2016 in W.P.No.9529 of 2013, has held as follows,

" Keeping the submissions made made by the learned counsel on either side on mind and the fact that the criminal case foisted against the petitioner has been kept pending for the past twelve years and the trial has not yet been commenced, further in addition that in identical situation, this Court has given directions to promote the petitioners therein, I am of the view that following the same, similar orders can be passed in case of the petitioner also."

9. Under the stated facts and circumstances of the case, the respondents are directed to give promotion to the petitioner within a period of two (2) weeks from the date of receipt of a copy of this order, which shall be made subject to the result of the pending enquiry. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

asi/kst

To

1. The Principal Secretary to Government,
Co-operation, Food and Consumer
Protection Department,
Secretariat, Chennai - 600 009.
2. The Registrar of Co-operative Societies,
No.170, Periyar E.V.R. High Road,
Kilpauk, Chennai - 600 010.

+1cc to Mr.M.Ravi, Advocate, S.R.No.445
+1cc to the Government Pleader, S.R.No.508

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MPI(CO)
CS/28/01/2019

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