

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4195 of 2019

M.R.Balashanmugam

.. Appellant/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/Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 09.7.2019 passed by the learned Single Judge in W.P.No.12016 of 2008.

W.P.No.12016 of 2008:-

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.I/2003-6 dated 14.06.2004 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the 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 Appellant : Mr.K.Premkumar

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This is an appeal against the judgment dated 9.7.2019 delivered by a learned Single Judge dismissing the writ petition of the appellant, where a challenge had been raised to the initiation of the disciplinary proceedings by the State Government against the appellant. The challenge was raised on

the ground that the appellant, who is discharging his duties as an Administrator of Periyar District Co-operative Agro Service Society, was not acting in the capacity of a Government servant nor was discharging any such function and therefore, any allegation arising out of such performance of the function cannot be a matter of disciplinary enquiry by the State Government. The contention is that Article 311 of the Constitution of India would not be applicable, inasmuch as the post occupied by the appellant is a statutory post and not a Government post.

2. Learned counsel for the appellant has also relied on the judgments in the case of State of Karnataka and others v. Ameerbi and others, reported in (2007) 11 SCC 681 and Mahavir Singh v. Khiali Ram and others, reported in (2009) 3 SCC 437 to contend that the post occupied by the appellant in respect whereof allegations have been made is not a civil post and consequently, the question of jurisdiction being exercised by the Government to undertake the disciplinary proceedings does not arise. It is, therefore, submitted that in the absence of any such authority with the State Government to undertake any such proceedings in the background that the Registrar had appointed the appellant as an Administrator under the Tamil Nadu Co-operative Societies Act, 1983, the impugned judgment deserves to be set aside and the order whereby the proceedings have been initiated by the Government as well as the charge memo to take action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules be quashed.

3. We have considered the submissions raised and we have perused the provisions of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity, "1983 Act").

4. From a perusal of the impugned judgment, we find that the appellant had been proceeded against for surcharge proceedings under Section 87 of the 1983 Act, criminal prosecution had also been launched and the State Government has initiated disciplinary proceedings under rules applicable to Government servants. So far as surcharge proceedings are concerned, they are independent proceedings and consequently, any such proceedings initiated will not take away the cloak of the appellant of a Government servant, inasmuch as he continued to be a Government servant and he could be recalled back as he was appointed by virtue of being a Government servant in terms of Section 88 of the 1983 Act. The Registrar can only appoint a Government servant as an Administrator and in such circumstances, the appellant cannot be said to have lost his identity as that of a Government servant.

5. In our opinion, it does not even get eclipsed as is

urged by the appellant in as much as he continued to discharge his duties as an Administrator by virtue of having been appointed by the Registrar only because he was a Government servant. The relationship of employer and employee therefore does not cease and the employer which is the State Government continues to enjoy the disciplinary control over the Administrator in the event he commits any breach of his duty.

6. The decisions that have been cited by the learned counsel for the appellant rest on the finding as to whether they enjoy a civil post or not. The said judgments are nowhere attracted on the facts of the present case, where admittedly the Registrar appoints a Government servant as an Administrator and which is also evident from a copy of the appointment order of the appellant that has been placed on record.

7. The impugned charge memo was issued by the State Government on a report that the appellant had caused loss to the State Government by paying deficient stamp duty in purchasing land on behalf of the Society where he was functioning as an Administrator. The contention of learned counsel for the appellant is that this was a function relating to the Society and not discharge of any Government function. We are unable to accept this analogy, inasmuch as, as already stated above, had the appellant not been a Government servant, he would never be appointed as an Administrator to discharge such duties. Thus, any such malfunction resulting in loss to the Government of stamp duty, in our opinion, is amenable to disciplinary action and therefore, there is no infirmity, much less a legal infirmity, in the issuance of the charge memo calling upon him to answer the same.

8. Consequently, for all the reasons stated herein above, we find no error in the impugned judgment warranting interference in a writ appeal. The writ appeal is, accordingly, rejected.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bbr

To

1. The Secretary to Government,
State of Tamil Nadu,
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.

+1cc to Mr.K.Premkumar, Advocate, S.R.No.13364

+1cc to the Special Government Pleader(Co-Op), S.R.No.13584

W.A.No.4195 of 2019

VBA(CO)
CS/10/03/2020



WEB COPY