



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.01.2020

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THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH
WP.No.34818 of 2019
and
WMP.No.35579 of 2019

V.Viswanathan

.. Petitioner

- Vs -

1. The Joint Registrar of Co-Operative Societies/
Common Cadre Authority,
Namakkal Region,
Namakkal.
2. The Deputy Registrar of Co-operative Societies,
Namakkal Circle,
Namakkal.
3. S.307, Muthukalipatti Primary Agricultural
Co-Operative Credit Ltd.,
rep. by its President.
Rasipuram Post,
Namakkal District-637 408.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the charge memo dated 06.03.2019 subsequent extending the order of suspension dated 29.05.2019 and show cause notice dated 3.12.2019 on the file of the 3rd respondent quash the same and consequently direct the first respondent to allow the petitioner to retire from service and pay all retirement benefits with interest in view of G.O.Ms.No.14, Co-operation, Food and Consumer Protection (CN1) Department dated 12.02.2019 and Common Cadre Service Rules, 2019.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.D.Venkatachalam
Additional Government Pleader for R1 & R2
Mr.R.Balaramesh
Spl. GP for R3

O R D E R

This writ petition has been filed challenging the charge memo issued by the third respondent dated 06.03.2019 and the subsequent order dated 29.05.2019 extending the



period of suspension beyond retirement and the consequent show cause notice dated 03.12.2019.

2. The case of the petitioner is that he joined the third respondent-Society in the year 2011 and he reached the position of a Secretary. His superannuation fell on 31.05.2019. In the meantime, the petitioner was suspended from service by an order passed by the President of the third respondent-Society on 31.01.2019. The third respondent also issued a Charge Memo to the petitioner on 06.03.2019. Thereafter, the third respondent passed an order on 29.05.2019 not permitting the petitioner to retire from service and extending his suspension.

3. The sum and substance of the charge that was made against the petitioner was that he continued to pay rent for the building, in which the third respondent-Society was located, when the Society was owning a building. The other charge is that the petitioner is using private software for accounting instead of a common accounting software given by the Government. The further charge is that the petitioner had paid salary and festival advance without the permission of the President of the Society. The final charge is that the attendance register and resolution book contains corrections and deletions.

4. The petitioner has challenged the charge memo and the subsequent order not permitting the petitioner to retire from service by extending his suspension, on the ground that the President of the third respondent-Society does not have the jurisdiction to initiate disciplinary proceedings or prevent the petitioner from retiring from service.

5. Mr.M.S.Palaniswamy, learned counsel appearing on behalf of the petitioner relied upon G.O.Ms.No.14, Co-operation, Food and Consumer Protection Department dated 12.02.2019. Under this Government Order, on and from the date when this Government Order comes into force, it is the Joint Registrar of Co-operative Societies, who shall be the competent authority to initiate any proceedings as against the persons, who fall under the common cadre. The secretary also falls under the common cadre. The learned counsel submitted that the President of the third respondent-Society did not have the authority or jurisdiction to issue the charge memo after 12.02.2019 and therefore, the charge memo itself is liable to be quashed and the subsequent order passed by the President not permitting the petitioner to retire from service is also liable to be quashed. The learned counsel also placed reliance upon Section 75(ii) of the Tamil Nadu Co-operative Societies Act, 1983, which provides that where a common cadre of service is constituted in respect of any post, all the employees holding such post on the date of constitution of such common cadre, shall be deemed to have been absorbed in the common cadre of service



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with effect on and from the date of constitution of such common cadre of service. By relying upon this provision, the learned counsel submitted that the petitioner automatically came into common cadre immediately after the issuance of G.O.Ms.No.14, Co-Operation, Food and Consumer Protection Department dated 12.02.2019 and it is the Joint Registrar, who is the competent authority to initiate any proceedings.

6. The third respondent has filed a counter affidavit in this case. Apart from explaining the charges against the petitioner, the counter affidavit proceeds on the ground that disciplinary proceedings were initiated against the petitioner when he was placed under suspension on 31.01.2019. Therefore, where the disciplinary proceedings has already commenced, there is a saving clause in the concerned Rule, which provides that the same Rules will continue and the subsequent Government Order will not have any effect in the pending disciplinary proceedings.

7. The learned counsel appearing on behalf of the third respondent submitted that the petitioner was suspended from service on 18.01.2018, but the common cadre service Rules 2019 came into force only on 12.02.2019. Therefore, there is no illegality in continuing with the disciplinary proceedings against the petitioner by the President of the third respondent-Society.

8. This Court has carefully considered the submissions made on either side and materials available on record.

9. It is now a well settled law that disciplinary proceedings will commence only on the issuance of a charge memo. Merely suspending an employee in contemplation of a future disciplinary proceedings, will not amount to commencement of disciplinary proceedings. This Law has been well settled by a catena of decisions of the Hon'ble Supreme Court.

10. In this case, the common cadre Service Rules, 2019 has come into force on 12.02.2019 and after coming into force of the Rules, it is only the Joint Registrar of Co-operative Societies, who is the competent authority, who can initiate disciplinary proceedings against the persons, who fall within the common cadre. In this case admittedly, the charge memo was issued by the third respondent only on 06.03.2019, which is much after the coming into force of the above Rules. Therefore, the third respondent clearly lacks jurisdiction to issue a charge memo and proceed further with disciplinary proceedings against the petitioner. It is for the very same reasoning that the subsequent order passed by the President of the third respondent-Society on 29.05.2019, also lacks jurisdiction. By virtue of this order, the petitioner was not allowed to retire from service and his



suspension was extended. The President of the third respondent-Society did not have jurisdiction to pass this order also.

11. At this juncture, it is relevant to rely upon the Judgment of the Division Bench of this Court in the case of The Special Officer Vs. A.Sundaram passed in WA.No.1284 of 2006 dated 13.12.2006, which was cited by the learned counsel for the petitioner. Relevant portions of the judgment is extracted hereunder:-

"7. The Government of Tamil Nadu issued G.O. Ms. No.55 dated 24.3.00 in exercise of powers conferred under Section 75 of the Tamil Nadu Co-operative Societies Act, 1983, constituting a common cadre of service in respect of the post of Secretaries of the banks. By the said G.O. Ms. No.55 dated 24.3.00, Tamil Nadu Primary Agricultural Co-operative Bank Common Cadre Service Regulation, 2000 (hereinafter referred to as Regulation, 2000) was framed and circulated. Regulation 3 deals with composition of common cadre to be maintained separately for "A" Class, "B" Class and "C" Class bank and the Secretary of such bank shall form the common cadre service in respect of respective class of banks. Under Regulation 3, all employees holding the post of Secretary of bank shall be deemed to have been absorbed in the common cadre service.

8. Section 75 of the Tamil Nadu Co-operative Societies Act, 1983, deals with the constitution of common cadre of service. As per sub-section (2) of Section 75, when any such common cadre of service is constituted under sub-section (1) in respect of any post, all the employees holding such posts on the date of constitution of such common cadre of service, shall be deemed to have been absorbed in the common cadre of service with effect on and from the date of constitution of such common cadre. The common cadre of service was constituted vide G.O. Ms. No.55 dated 24.3.00 with effect from the date of issuance of the said order. Thus, as per sub-section (2) of Section 75 read with Regulation 3, the writ petitioner, A.Sundaram, who was holding the post of Secretary of the bank on 24.3.00 is deemed to have been absorbed in the common cadre of Secretary of the bank.

9. Regulation 3 also deals with cadre authority, which reads as follows :-

"Cadre Authority is the committee as provided in the Section 75 of the Act. Pending constitution of the committee under first proviso to sub-section (3) of Section 75 of Tamil Nadu Co-operative Societies Act, the Joint Registrar of Co-operative



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Societies in the region concerned shall be the "Cadre Authority" in respect of Primary Agricultural Co-operative banks for a period of three years from the date of coming into force of these regulations."

10. Sub-section (3) of Section 75 of the Tamil Nadu Co-operative Societies Act, 1983, reads as follows :-

"(3) The order under sub-section (1) shall provide for the constitution of the competent authority which shall be a committee consisting of both officers of the Government and non-officials and the total strength of such committee shall not exceed five, from among whom one of the officers of the Government not below the rank of Joint Registrar in the Co-operative Department or not below such rank in other departments of the government as may be prescribed shall be appointed by the Government as the Chairman, to exercise the powers of recruitment, appointment, transfer and disciplinary control (including censure, stoppage of increment, withholding of promotion, suspension by way of punishment, reduction to a lower rank in the seniority list or to a lower post or time scale whether in the same service or in another service or to a lower stage in time scale, compulsory retirement, removal or dismissal) and such other powers as may be prescribed in respect of holders of posts in such common cadre of service. After the constitution of such competent authority, registered society concerned shall not, in respect of holders of posts in such common cadre of service, exercise any of the powers which are conferred by or under this Act or the rules made thereunder on the competent authority in respect of such common cadre of service. There shall be a separate competent authority in respect of each common cadre of service :



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Provided that the Government may direct that for such period not exceeding three years from the date of constitution of a common cadre of service, such committee in relation to that common cadre of service, shall consist of only a single officer of the Government not below the rank of Joint Registrar in the Co-operative Department or not below such rank in other departments of the Government as may be prescribed and such officer shall be the "competent authority constituted under sub-section (3) of Section 75" for the purposes of this Act and any reference to the competent authority in this Act shall, for the period mentioned in this proviso, be construed as a reference to the single officer aforesaid :

Provided further that the registered society under which an employee borne on a common cadre of service is for the time being employed shall also have the power to impose on such employee the penalty of censure or stoppage of increment up to two years without cumulative effect."

11. As per Sub-section (3) of Section 75 of the Act and Regulation 3, a committee was to be constituted, but before that, in the middle of the year 2000, interim order of stay was passed by this court in one or other case staying the operation of the entire G.O. Ms. No.55 dated 24.3.00. During the pendency of these cases, the State Government issued G.O. Ms. No.17 dated 23.1.01 and the following committee was constituted :-

"The Cadre Authority shall be a Committee consisting of the following as provided in sub-section (3) of Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 :-

- 1 Managing Director or Special Officer as the case may be of the respective District Central Co-operative Bank .. Chairman
- 2 President of the concerned District Central Co-operative Bank .. Member
- 3 Vice-President of the concerned District Central Co-operative Bank .. Member
- 4 Regional Joint Registrar of Co-operative Societies of the concerned region only .. Member



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5 President of the Primary .. Member
Agricultural Co-operative Bank
with highest working capital

12. However, the said G.O. Ms. No.17 dated 23.1.01 by which the cadre authority was constituted could not come into effect due to the interim order of stay passed by this Court. Finally, all the writ petitions were dismissed on 23.6.03 vide the judgment in P.Baluchamy Vs. The State rep. by the Secretary to Government, Co-operation, Food and Consumer Protection Dept., Fort St. George, Chennai - 9 and two others reported in 2003 (3) CTC 65 and the interim order of stay stood vacated. It is only thereafter, the appellant - Special Officer, issued the impugned order of dismissal dated 30.08.03 removing the writ petitioner, A.Sundaram from the services of the bank.

13. Learned counsel for the State has produced a copy of the recent G.O. Ms. No.79 dated 5.3.04, whereby another amendment has been made and a committee has been constituted to function as Cadre Authority, which reads as follows :-

"The Cadre Authority shall be a Committee consisting of the following as provided in sub-section (3) of Section 75 of the Tamil Nadu Co-operative Societies Act, 1983 :-

- | | | |
|---|---|---------------------|
| 1 | Regional Joint Registrar | .. Chairman |
| 2 | Special Officer of the District ..
Central Co-operative Bank | Member/
Convenor |
| 3 | Two Circle Deputy Registrars in
the region | ..
Members |
| 4 | The Special Officer of the
Primary Agricultural Co-
operative Bank with highest ..
working capital in the region | Member |

Thus, since 5.3.04, the aforesaid committee is the Cadre Authority for the Secretary of the Bank to take any decision.

14. From G.O. Ms. No.205 dated 25.5.01, it appears that the State Government refused to extend the term of the members of the Boards of Primary Agricultural Co-operative Societies and authorised the Registrar of the Co-operative Societies/Regional Joint Registrars of the Co-operative Societies to appoint Special Officers in all those societies. Pursuant to the said G.O.



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No.205 dated 25.5.01, the Special Officer was appointed to perform the duty of the Board of the bank. However, he has not been invested with the power and duty of Cadre Authority, either under sub-section (3) of Section 75 or under Regulation 3. Even if the G.O. Ms. No.55 dated 24.3.00 is stayed by this Court, any action already taken on the basis of such Government Order cannot be treated to have been stayed. If the Secretaries of the Bank were deemed to have been absorbed in the common cadre on 24.3.00, the effect of the order of stay of G.O. Ms. No.55 dated 24.3.00 will be applicable to such absorption. Only effect will be that no further order could have been passed thereafter as per Regulation, 2000 circulated by the said G.O. Ms. No.55 dated 24.3.00. Similarly, the order of stay passed by the Court will not amount to investing the special officer with the power of the cadre authority till such power is vested under Section 75 (3) of the Act. This apart, as per sub-section (3) of Section 75, only an officer in the rank of Joint Registrar or above can be empowered by the State to function as cadre authority of bank in the absence of a committee and no officer below such rank, including the special officer can exercise the power of the cadre authority. Thus, even if G.O. Ms. No.55 dated 24.3.00 was stayed by this court in one or other case, the Special Officer was not empowered to act as a Cadre Authority. The impugned order dated 30.08.03 has also been issued by the appellant - Special officer after the order of stay stood vacated on dismissal of the writ petitions (dismissed on 23.6.03). So he cannot take any advantage of stay order passed by this Court."

12. It is clear from the above judgment that till the Authority is vested with the power under Section 75 of the Co-Operative Societies Act, it is only the concerned authority, who is empowered to initiate proceedings as against persons falling within the common cadre. The Division Bench went to the extent of saying that even if the Government Order is stayed, the Special Officer in that case did not have the power to act as the cadre authority and the Division Bench therefore, interfered with the disciplinary proceedings initiated by the Special Officer in that case. The Division Bench made it clear that it is only the Cadre Authority/Competent Authority, who is empowered to proceed further with the disciplinary proceedings as against the common cadre employee. The above judgment of the Division Bench was subsequently followed by another Division Bench in Krishnan Vs.The Additional Registrar of Co-Operative Societies passed in WA.No.1173 of 2012, dated 09.06.2014.



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13. It is also relevant to rely upon a recent order that was passed by this Court in WP No.26856 of 2019 dated 16.09.2019. Relevant portions of the order is extracted hereunder:-

"5.The learned Special Government Pleader appearing for the respondents, on instructions, would fairly submit that as per G.O.Ms.No.14, Co-operation, Food and Consumer Protection (CN1) Department, dated 12.02.2019, the Competent Person to take action against the Secretary is the Joint Registrar, however, in the present case, the 3rd respondent has passed the impugned order which is unsustainable one.

6.In view of the fair submission made by the learned Special Government Pleader appearing for the respondents, since the incompetent person, namely, the 3rd respondent has passed the impugned order and as per G.O.Ms.No.14, Co-operation, Food and Consumer Protection (CN1) Department, dated 12.02.2019, the Competent Person to take action is the Joint Registrar, this Court is inclined to set aside the impugned order.

Accordingly, this Writ Petition is allowed. The impugned order is set aside. Liberty is granted to the first respondent to pass appropriate orders, if so advised. No costs. Consequently, connected Miscellaneous Petitions are closed."

14. The above order passed by the learned Single Judge has lot of significance, since the learned Judge was dealing with the effect of G.O.Ms.No.14 Co-Operation, Food and Consumer Protection Department, dated 12.02.2019 and it was categorically held that it is only the Joint Registrar of Co-Operative Societies, who is the Competent Authority to initiate the disciplinary proceedings as against the persons, who fall within the common cadre.

15. In view of the settled position of the law and consistent view taken by this Court, this Court has no hesitation to interfere with the charge memo dated 06.03.2019 and the proceedings dated 29.05.2019, initiated by the President of third respondent-Society and accordingly, the same is quashed. By virtue of quashing the proceedings of the third respondent, the petitioner must be permitted to retire. It goes without saying that if the petitioner has caused any loss to the Co-Operative Society on the ground of misappropriation or similar such allegation, proceedings can be initiated under Section 87 of the Co-Operative Societies Act even after retirement. The law on this issue has been settled by the Division Bench of this Court in the case of The Registrar of Co-Operative Societies Vs. G.Manoharan reported in 2010 2 CTC 234 and also in the case of M.K.S.Balasubramanan Vs. Kanceepuram



Central Co-Operative Bank Limited reported in 2010 2 CTC 569.

16. In the result, this writ petition is allowed and the first respondent shall pass appropriate orders permitting the petitioner to retire from services and he shall be paid with all the retirement benefits in accordance with the Rules. This process shall be completed within a period of six(6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS vi)

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Sub Assistant Registrar

kmi

To

1. The Joint Registrar of Co-Operative Societies/
Common Cadre Authority,
Namakkal Region,
Namakkal.

2. The Deputy Registrar of Co-operative Societies,
Namakkal Circle,
Namakkal.

+1cc to Mr.M.S.Palaniswamy , Advocate SR.No.4601

+1cc to Mr.r.Balaramesh , Advocate SR.No.4952

+1 cc to Government Pleader Sr.No. 5715

WP.No.34818 of 2019

A.SK(24/02/2020)