



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2020

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

**W.P(MD)No.16052 of 2015**

**and**

**M.P(MD)No.1 of 2015 and W.M.P(MD)No.7850 of 2016**

A.Andhoni Dass

.. Petitioner

Vs.

1.The Principal Secretary to Government,  
Co-operative, Food and Consumer  
Protection Department,  
Chennai - 600 009.

2.The Registrar,  
Co-operative Societies,  
Kilpauk, Chennai - 10.

3.The Joint Registrar of Co-operative Societies,  
Tiruchirapalli Region,  
Tiruchirapalli District.

4.The Deputy Registrar of Co-operative Societies,  
Tiruchirapalli - 20. .. Respondents

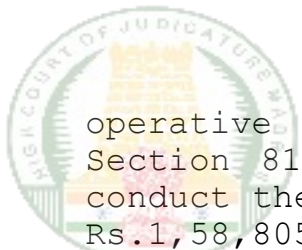
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records pertaining to the impugned order of the 1<sup>st</sup> respondent in G.O.(D)No.312, dated 26.12.2014 and quash the same as illegal and pass such further or other orders.

|                 |                                |
|-----------------|--------------------------------|
| For Petitioner  | : Mr.M.Sridharan               |
| For Respondents | : Mr.D.Muruganandam,           |
|                 | Additional Government Pleader. |

**ORDER**

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order of the 1<sup>st</sup> respondent in G.O.(D)No.312, dated 26.12.2014 and quash the same as illegal.

2.The case of the petitioner is that he is serving as the Sub Registrar in P.1641, Melakalakandarkottai Primary Agriculture Co-  
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operative Society. He was appointed as enquiry officer under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 to conduct the enquiry over the financial irregularities to the tune of Rs.1,58,805.35 committed by the former Secretary and the former Ministerial Servant of the society. The petitioner conducted the enquiry and concluded that the delinquents therein are guilty of the charges and submitted his report and the same was accepted by the disciplinary authority and based on the said report, surcharge proceedings were also initiated against the delinquents therein. While so, the 4<sup>th</sup> respondent issued charge memo in Na.Ka.No.11836/2008/Pa Tha, dated 10.02.2009, stating that he had committed serious mistakes while discharging his quasi judicial function, for which, he submitted his explanation. Being not satisfied with the explanation, enquiry was initiated and the 3<sup>rd</sup> respondent found that the charges were proved and imposed punishment of stoppage of increment for a period of five years, against which, he preferred appeal to the 2<sup>nd</sup> respondent, in which, the punishment was modified as stoppage of increment for two years. Aggrieved over the same, he approached the 1<sup>st</sup> respondent, who revised the punishment as stoppage of increment for two years without cumulative effect, vide impugned order, dated 26.12.2014. Against which, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that the petitioner exercised his duty in a fair manner as a quasi judicial officer. Though the disciplinary authority has every right either to accept or reject the enquiry report, having accepted his enquiry report and acted upon the same, it is not fair on the part of the 4<sup>th</sup> respondent to issue the charge memo. The Hon'ble Apex Court as well as this Court have time and again reiterated that deficiency in discharging quasi-judicial function, cannot be a basis for disciplinary action as it is always subject to judicial supervision. He would also rely upon the following decisions of the Hon'ble Supreme Court:

- (i) Union of India v. R.K.Desai reported in 1993(2) SCC 49;
- (ii) Zunjarrao Bhikaji Nagarkar v. Union of India reported in AIR 1999 SC 2881.
- (iii) V.D.Trivedi v. Union of India reported in 1993(2) SCC 56.
- (iv) Union of India v. A.N.Saxena reported in 1992(3) SCC 124.
- (v) S.Govindha Menon v. Union of India reported in AIR 1967 SC 1274.

4.The learned Additional Government Pleader appearing for the respondents submitted that the petitioner as enquiry officer has omitted to recommend for departmental action, after conducting enquiry and therefore, there is no infirmity in the charge memo and the punishment imposed on him.



5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. The petitioner was appointed as enquiry officer to conduct the enquiry over the financial irregularities in the society and after enquiry, he submitted his report finding that the delinquents are guilty of the charges, upon which, surcharge proceedings were initiated against them. The disciplinary authority has accepted the enquiry report and acted upon the same. But, the 4<sup>th</sup> respondent issued charge memo stating that the petitioner had committed serious mistakes while discharging his quasi judicial function and finally, he was imposed a punishment of stoppage of increment for two years without cumulative effect. The Hon'ble Apex Court as well as this Court, have time and again held that deficiency in discharging quasi judicial function, cannot be a basis for discharging action. The Hon'ble Apex Court, after following the earlier decisions in V.D.Trivedi v. Union of India reported in 1993(2) SCC 56, Union of India v. R.K.Desai reported in 1993(2) SCC 49, Union of India v. A.N.Saxena reported in 1992(3) SCC 124 and S.Govindha Menon v. Union of India reported in AIR 1967 SC 1274, in the case of Zunjarrao Bhikaji Nagarkar v. Union of India reported in AIR 1999, held as under:

"28. Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act but we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases :

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however,



small the bribe may be because Lord Coke said long ago  
"though the bribe may be small yet the fault is great".

None of the above charges are made against the petitioner herein. Therefore, this Court is of the view that the petitioner having discharged his quasi-judicial function as an enquiry officer and submitted his enquiry report, which was also accepted by the disciplinary authority, the 4<sup>th</sup> respondent cannot issue the charge memo and subject him to face any disciplinary proceedings. It is not the case of the respondents that the petitioner failed to submit a proper report. In fact, the report submitted by the petitioner was accepted and based on which, surcharge proceedings were also initiated against the delinquents. Therefore, the charge memo issued against the petitioner stating that he had not recommended for prosecution, is totally unwarranted and illegal and based on the same, the impugned punishment was imposed on the petitioner, which requires interference at the hands of this Court.

7. Accordingly, the writ petition is allowed and the impugned order, in G.O.(D)No.312, dated 26.12.2014, passed by the 1<sup>st</sup> respondent, is quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn

To

1.The Principal Secretary to Government,  
Co-operative, Food and Consumer  
Protection Department, Chennai - 600 009.

2.The Registrar,  
Co-operative Societies,  
Kilpauk, Chennai - 10.

3.The Joint Registrar of Co-operative Societies,  
Tiruchirapalli Region,  
Tiruchirapalli District.

4.The Deputy Registrar of Co-operative Societies,  
Tiruchirapalli - 20.

+1 CC to M/s.SPL GP ( SR-2837[F] dated 24/01/2020 )

+1 CC to M/s.M.SRIDHARAN, Advocate ( SR-2993[F] dated 24/01/2020 )

**ORDER MADE IN**

**W.P (MD) No.16052 of 2015**

**23.01.2020**

**SMA/05/02/2020/4P/7C**

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