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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.Nos.2220 & 2466 of 2021
and
CMP.Nos.14045 & 15857 of 2021

1. S.307, Muthukalipatti Primary
Agricultural Co-operative Credit Ltd.,
Rep by its President,
Rasipuram Post,
Namakkal District - 637 408 ...Appellant/Respondent
in both W.As.

Vs.

1. V. Viswanathan
2. The Joint Registrar of Co-operative
Societies/Common Cadre Authority,
Namakkal Region, Namakkal.
3. The Deputy Registrar of the
Co-operative Societies
Namakkal Circle, Namakkal. ...Respondents/Petitioners
in both W.As

COMMON PRAYER:- Writ appeals are filed under clause 15 of the Letter Patent act to set aside the order passed in Review Application in 42 of 2021 dated 19.03.2021 and to set aside the order passed in WP.No.34818 of 2019 dated 23.01.2020.

Prayer in Rev.A.No.42 of 2021: Review Petition filed under Article 226 of the constitution of India read with order 47 Rule 1 of CPC r/w 114 CPC to review the order in W.P.No.34818/2019 dated 23.01.2020.

Prayer in W.P.No.34818 of 2019: Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to calling for the records of the charge memo dated 06.03.2019 subsequent extending the order suspension dated 29.05.2019 and show cause notice dated 03.12.2019 on the file of the 3rd respondent quash the same and consequently



direct the 1st 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 Appellants : Mr.R.Balaramesh,
in both WAs

For Respondent : Mr.M.S.Palanisamy for R1
Mr.K.T.S. Tippu Sultan
Government Advocate (for R2 & R3)
in both WAs

C O M M O N J U D G M E N T
(Judgment of the Court was made by S.VAIDYANATHAN, J.)

The present appeals have been preferred challenging the order dated 19.03.2021 passed in Review Application No. 42 of 2021 and the order dated 23.01.2020 passed in WP.No.34818 of 2019.

2.The issue in these writ appeals is that whether the Government Order No.14, Co-operation, Food and Consumer Protection (CN1) Department dated 12.02.2019 will prevail over or the bye-law based on which the employee has been placed under suspension, prior to the common cadre service Rules came into force. Even though it has been contended by the appellant that the G.O. has been communicated only on 04.06.2019 and that it will come into operation only from that date, we are of the view that it is only a communication, but it will take effect from the date of issuance of G.O. and not from the date of communication. In the case on hand, the employee who was placed under suspension has been charge sheeted on 06.03.2019 and he was relieved from service on 31.05.2019, after coming into force of the G.O., showing that the appellant herein reserves the right to proceed against the employee departmentally.

3.Mr.Palanisamy, learned counsel for the writ petitioner/first respondent would draw the attention of this Court to Section 75(ii) of Tamil Nadu Co-operative Societies Act, 1983 and the relevant portion is extracted below.

75. Constitution of common cadre of service.

(2) 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 from on and from the date of constitution of such common cadre of service:



Provided that the salary (including allowances) of any such Employee shall not be varied to his disadvantage:

Provided further that any such Employee may, within such period may be prescribed, by notice in writing to the Competent Authority constituted under sub-section (3) intimate his option for not becoming a Member of such common cadre of service, and in that event, his service in the registered Society shall stand determined with effect on and from the date of such notice and he shall be entitled to either,

4. He would further submit that on creation of common cadre, the bye law ceased to operate and that they will be governed by the clauses in the G.O. which will have a statutory force. Hence the orders of the learned single Judge in interfering with the order impugned in the writ petition and in the review are perfectly valid and need not be interfered with.

5. Heard both sides.

6. It is not in dispute that the employee was suspended for an incident prior to coming into force of the common cadre service Rules. For the sake of convenience the relevant portion of G.O. namely 30 (1) (i) is extracted below.

30. Disciplinary proceedings:- (1) The disciplinary proceedings referred to in sub-rule (4) of rule 29 against a Common Cadre Employee shall be conducted with due observance of the principles of natural justice for which it shall be necessary that:-

(i) The Common Cadre Employee shall be served with a charge sheet duly approved by the Common Cadre Authority containing specific charges and mention of grounds in support of each charge and he shall be required to submit explanation in respect of the charge within a reasonable time which shall not be less than fifteen (15) days.

7. Any disciplinary proceedings commenced against the Common Cadre Employees of a Society before the Government of these rules and still continuing shall as far as may be deemed to have been commenced under these rules and may be continued accordingly."

29. AUTHORITY COMPETENT TO IMPOSE PENALTIES

The authority competent to impose the penalties on all categories of employees shall be the Board.

30. IMPOSITION OF PENALTIES

(1) (a) No penalty shall be imposed on any employee unless he has been given a reasonable opportunity of making any representation he may desire to make and such representation, if any, shall be taken into consideration



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before orders are passed.

(b) No major penalty specified in Special bylaw No.'28' shall be imposed on any employee, unless a domestic inquiry is conducted and the employee concerned has been afforded an opportunity to defend himself:

Provided that nothing contained in this special bylaw shall apply in the case of removal of an employee under Section 77 of the Act.

(2) Every order imposing penalty shall be communicated to the employee concerned in writing stating the grounds on which the penalty has been imposed.

(3) Every penalty of fine imposed under this special bylaw shall be in accordance with the provisions of Section 35 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947 and the rules relating thereto, and for the said purpose the reference to the prescribed authority occurring in the said Section 35 shall be construed as a reference to the registrar. However, no penalty by way of fine shall be imposed on any employee above the clerical or equivalent cadre of staff.

7. Unless otherwise the bye-law provides, the employee cannot be proceeded against after retirement. This will be applicable to all categories provided they do not come under the purview of G.O. dated 12.02.2019 creating common cadre. Once he comes into the common cadre, for the incident that took place prior to 12.02.2019, the authority competent to deal with the employees in the common cadre is entitled to proceed with the enquiry, but it shall be done only in terms of the clauses mentioned in the G.O. The G.O. has nowhere stated that the employee could be continued to be kept under suspension even after attaining the age of superannuation or there is no saving clause in the G.O. that if there are any conflict between the bye-law and the G.O, the clauses that are not going to be affected by the G.O. would continue to be in operation. In the absence of the enabling provision to continue departmental action of those employees falling under the common cadre, even though the incident would have taken place much prior to G.O. dated 12.02.2019, in the absence of specific clause in the G.O. to proceed departmentally after retirement, the appellant cannot proceed with the departmental action against the writ petitioner.

8. Hence we are of the view that the orders of the learned single Judge passed in the review petition and in the writ petition need not be interfered with. This Court makes it very clear that it is open to the Government to make suitable amendments to the G.O. to enable continuation of the departmental proceedings even after retirement of the employee, but, however, for the writ petitioner, no further action could be continued.



All the benefits due to the employee shall be settled within a period of four months from the date of receipt of a copy of the judgment.

9. With the above observation, both the writ appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Joint Registrar of Co-operative Societies/Common Cadre Authority, Namakkal Region, Namakkal.
2. The Deputy Registrar of the Co-operative Societies Namakkal Circle, Namakkal.

+2cc to Mr.R.Balaramesh, Advocate, S.R.No.50362 & 50363

+1cc to Mr.M.S.Palanisamy, 1st Respondent, Advocate, S.R.No.50583

W.A.Nos.2220 & 2466 of 2021
and CMP.Nos.14045 & 158857 of 2021

NR(CO)
RGA(05/01/2022)