



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

WEB COPY

W.P. (MD)Nos.21798 of 2019 & 5353 of 2020
and W.M.P. (MD) Nos.18529 to 18531 of 2019 & 1772 of 2020,
4638 & 4639 of 2020 and 230 of 2021
(Through Video Conference)

B.Raveendran ... Petitioner in both W.P.'s
Vs.

1. The Secretary to Government,
Department of Cooperation, Food and
Consumer Protection Department,
St.George Fort, Secretariat,
Chennai 600 009
2. The Registrar of Cooperative Societies,
N.V.M.Maalgai, No.170, E.V.R.High Road,
Kilpauk, Chennai 600 010
3. The Joint Registrar of Cooperative Societies,
Virudhunagar Region, Virudhunagar.
4. The Deputy Registrar of Cooperative Societies,
Aruppukottai, Virudhunagar District.
... RR 1 to 4 in W.P.(MD) No.21798 of 2019 &
RR 1,2,3 & 5 in W.P.(MD)No.5353 of 2020
5. The Joint Registrar of Cooperative Societies,
Tirunelveli Region, Tirunelveli.
... R4 in W.P.(MD)No.5353 of 2020

PRAYER in W.P. (MD) No.21798 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned Charge Memorandum issued by third respondent vide Na.Ka.8727/17 pa.tho dated 24.07.2019 and quash the same and consequentially direct the respondents to regularize the petitioner's service as Deputy Registrar of Cooperative Societies in pursuance of G.O.(3D) No.7, Cooperation, Food and Consumer Production Department, dated 21.05.2018.

PRAYER in W.P. (MD) No. 5353 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to impugned G.O.Ms.No.23 Cooperation, Food and Consumer Protection (CD1) Department, dated



4.03.2020 passed by the 1st respondent and the consequential order passed by the 2nd respondent vide ந.க.எண் .276/2020நே.உ.1(1) dated 5.3.2020 and further consequential order passed by the 4th respondent vide ந.க.எண் .1000/2019 மது நாளி .6.3.2020 quash the same and consequentially direct the respondents to regularize the service of the petitioner as Deputy Registrar of Cooperative Societies in pursuance of G.O.(3D) No.7 Cooperation, Food and Consumer Production Department, dated 21.05.2018.

In both the writ petitions:

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by Mr.P.Mahendran,
Additional Government Pleader.

C O M M O N O R D E R

Since the issue involved in both the writ petitions are one and the same, they are disposed of by this common order.

2. The petitioner herein, is the Deputy Registrar of Cooperative Societies. Earlier, when he was handling the additional charge as Special Officer of Aruppukottai Co-operative Marketing Society, between 05.08.2008 to 24.05.2011, he was served with a charge memo dated 27.12.2017 under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, (hereinafter referred to as the 'Rules'), by the fifth respondent herein, for three alleged charges of failure to supervise the Secretary and Clerk of the Society.

3. After about two years, the third respondent had altered the charge memorandum from Rule 17(a) to Rule 17(b) of the Rules and issued a fresh charge memorandum, dated 24.07.2019 on the same set of violations. Challenging the charge memo dated 24.07.2019 under Rule 17(b) of the Rules, the writ petition in W.P.(MD) No.21798 of 2019 has been filed and this Court had granted an order of interim stay on the operation of the revised charge memo under Rule 17(b) of the Rules.

4. By quoting the pendency of the charges against the petitioner, the first respondent herein, through G.O.Ms.No.23 Cooperation, Food and Consumer Protection (CD1) Department, dated 4.03.2020, had de-promoted the petitioner from the post of Deputy Registrar of Cooperative Societies to Cooperative Sub Registrar. Consequently, the second respondent herein, had passed an order dated 05.03.2020 implementing the de-promotion order. The Government Order dated 04.03.2020 and the consequential order dated 05.03.2020 by the second respondent herein, are under challenge in W.P.(MD) No.5353 of 2020.



5. While the learned counsel for the petitioner would submit that the respondents have not followed the procedure under the Rules for altering the charge memorandum from Rule 17(a) to Rule 17(b) of the Rules and had de-promoted the petitioner without any enquiry, the learned Additional Government Pleader for the respondents would submit that the earlier promotion to the post of Deputy Registrar of Cooperative Societies was temporary and therefore, the action of the respondents in de-promoting him, in view of the pendency of the departmental enquiry, cannot be found fault with. The very inception of the disciplinary action initiated against the petitioner requires to be interfered by this Court on a very basic infirmity adopted by the respondents in failing to observe the procedure contemplated for proceeding with a departmental action under Rule 17(b).

6. For the sake of convenience, Rules 17(a) & 17(b) of the Rules are extracted hereunder:-

"17. (a): Procedure to be followed to impose minor penalties:-

In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in rule 8 or in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed ;

Provided that the requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reason impracticable to communicate with him:

Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty.

Rule 17(b): Procedure to be followed to impose major penalties:-



(i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders.

A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;



Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided:

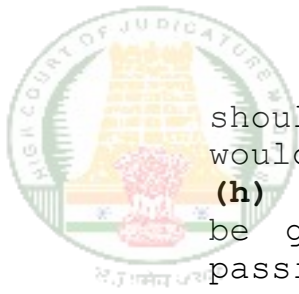
Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in these Rules.

Provided also that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits.

Explanation .- The Government servant shall not take the assistance of any retired Government servant who has two pending disciplinary cases on hand, in which he has to give assistance."

7. When the Disciplinary Authority proposes to impose on a member of a Civil Service, under the State, for any of the penalties referred therein, the following procedure requires to be adopted:

- (a)** The grounds on which the action is proposed, should be reduced in the form of definite charges;
- (b)** The charges are required to be communicated to the Delinquent;
- (c)** The charge memo should be accompanied with the statement of the allegation, on which, the charges are based (or) any other like circumstances;
- (d)** The charge memo shall call upon the Delinquent to give his written statement of defence;
- (e)** The charge memo should seek for the Delinquent's desire of the mode of enquiry to be conducted;
- (f)** When a Delinquent opts for an oral enquiry, such an oral enquiry shall be conducted;
- (g)** Even when an oral enquiry is waived, an enquiry



should be held on un-admitted charges and the Delinquent would be entitled to cross-examine the witnesses;

(h) The Delinquent, thereafter or at any stage, should be given the opportunity of personal hearing, before passing of final orders; and

(i) An enquiry report shall be prepared together with a statement of findings and grounds there of.

8. In the instant case, originally, the petitioner was subjected to charges under Rule 17(a) on 27.12.2017 and after a considerable time, new charges were framed on 24.07.2019 under Rule 17(b) on the same set of statement of allegations. Though this Court had granted an order of interim stay of the charge memo, the first respondent herein, without any enquiry or further proceedings, had de-promoted the petitioner to the post of Cooperative Sub Registrar. Apparently, the act of de-promotion would amount to a punishment, which has been made without following the procedure under Rule 17(b) of the Rules. On this sole ground, the charge memo as well as the subsequent de-promotion orders cannot be sustained.

9. For all the foregoing reasons, this impugned Charge Memorandum issued by third respondent vide Na.Ka.8727/17 pa.tho dated 24.07.2019 is quashed and the subsequent order of the first respondent in G.O.Ms.No.23 Cooperation, Food and Consumer Protection (CD1) Department, dated 4.03.2020 and the consequential order passed by the 2nd respondent vide ந.க.எண் .276/2020நே.உ.1(1) dated 5.3.2020 and further consequential order passed by the 4th respondent vide ந.க.எண் .1000/2019 மதுரா நாளி .6.3.2020 are quashed.

10. In view of quashing of these orders, the petitioner shall be retained in his original post as Deputy Registrar, as per the earlier orders passed in G.O.(3D) No.7, Cooperation, Food and Consumer Production Department, dated 21.05.2018.

11. However, if the respondents are of the view that the petitioner should be subjected to departmental action under Rule 17 (b) of the Rules, and they are hereby granted liberty to do so, by strictly adhering to the procedure contemplated under Rule 17(b).

12. Both the writ petitions stand allowed accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

1. The Secretary to Government,
Department of Cooperation, Food and
Consumer Protection Department,
St.George Fort, Secretariat,
Chennai 600 009.
2. The Registrar of Cooperative Societies,
N.V.M.Maalgai, No.170, E.V.R.High Road,
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3. The Joint Registrar of Cooperative Societies,
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4. The Deputy Registrar of Cooperative Societies,
Aruppukottai, Virudhunagar District.
5. The Joint Registrar of Cooperative Societies,
Tirunelveli Region, Tirunelveli.

+1 CC to M/s.GP (SR-4313[F] dated 10/02/2021)

+2 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-4529 & 4530[F] dated 11/02/2021)

Common Order made in
W.P. (MD)Nos.21798 of 2019 & 5353 of 2020
Dated: 09.02.2021

ES (CO)
TR(16.03.2021) 7P 9C