



W.P.Nos.22644 of 2019 & 4992 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on 10.01.2021

***Orders Pronounced on
17.03.2022***

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.22644 of 2019 and W.P.No.4992 of 2020
and

W.M.P.Nos.22109, 22114, 22118 of 2019
and

W.M.P.Nos.5900 and 5905 of 2020
and

W.M.P.Nos.26357 of 2021

W.P.No.22644 of 2019

M.Raja

..Petitioner

Vs.

1. The Principal Secretary to Government,
Cooperation, Food and Consumer Protection (CL1)
Department, Secretariat, Fort St.George,
Chennai - 600 009.
2. The Registrar of Co-operative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.
3. The Joint Registrar of Cooperative Societies,
Krishnagiri Region,
Krishnagiri District.



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4. The Deputy Registrar of
Co-operative Societies,
Krishnagiri

(R4 impleaded vide order dated 20.12.2021
made in WMP.No.26353 of 2021 by VPNJ)

..Respondents.

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 4th respondent viz., Deputy Registrar of Cooperative Societies, Krishnagiri in its Charge memo Na.Ka.No.1575/2015/Pa.Tho dated 25.08.2018 and the further order of the 1st respondent in its G.O(Ms.)No.71 dated 05.07.2019 and quash the same and consequently, direct the respondents to promote the petitioner as Deputy Registrar of Co-operative Societies for the panel year 2018-19 (crucial dated 1.10.2017) (Prayer amended vide order dt. 20.12.2021 made in WMP.26354/2021 by VPNJ)

For petitioner : Mr.V.Vijay Sankar

For respondents : Mr. P.Ganesan
Additional Government Pleader

W.P.No.4992 of 2020

M.Raja

..Petitioner



W.P.Nos.22644 of 2019 & 4992 of 2020

Vs.

1. The Additional Chief Secretary to Government,
Cooperation, Food and Consumer Protection (CD1)
Department, Secretariat, Fort St.George,
Chennai - 600 009.
2. The Registrar of Co-operative Societies,
No.170, Periyar E.V.R.High Road,
Kilpauk,
Chennai - 600 010.
3. The Joint Registrar of Cooperative Societies,
Krishnagiri Region,
Krishnagiri District.

..Respondents.

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in G.O.(D).24 Cooperation Food and Consumer Protection (CD1) Department dated 03.02.2020 and quash the same and consequently direct the 1st respondent to pass an order of promotion by including the petitioner's name in the panel for the post of Deputy Registrar of Co-operative Societies for the year 2018-2019 as on 01.10.2017.

For petitioner : Mr.V.Vijaysankar

For respondents : Mr. P.Ganesan
Additional Government Pleader



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COMMON ORDER

WEB COPY The prayer in W.P.No.22644 of 2019 is to issue a Writ of Certiorarified Mandamus to call for the records of the 4th respondent viz., Deputy Registrar of Cooperative Societies, Krishnagiri in its Charge memo Na.Ka.No.1575/2015/ Pa.Tho. dated 25.08.2015 and the order of the 3rd respondent in its Na.Ka.No.3126/2015.Pa.Tho dated 15.02.2018 and the further order of the 1st respondent in its G.O.(Ms)No.71 dated 05.07.2019 and quash the same and consequently direct the respondents to promote the petitioner as Deputy Registrar of Cooperative Societies for the panel year 2018-19 (Crucial dated 1.10.2017)

The prayer in W.P.No.4992 of 2020 is to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in G.O.(D).24 Cooperation Food and Consumer Protection (CD1) Department dated 03.02.2020 and quash the same and consequently direct the 1st respondent to pass an order of promotion by including the petitioner's name in the panel for the post of Deputy Registrar of Co-operative Societies for the year 2018-2019 as on 01.10.2017.



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2. The case of the petitioner is that he was appointed as a Junior Inspector of Co-operative Societies on 30.06.1993. He was further promoted to post of Senior Inspector of Co-operative Societies and subsequently, promoted as Co-operative Sub Registrar on 02.09.2002. The petitioner is presently working as Co-operative Sub-Registrar Field Officer. According to him, he has been enjoying blemishless record of service throughout.

3. On 25.08.2015, the petitioner was served with a charge memo under Section 17(b) of the Tamil Nadu Civil Services and Appeal Rules. The charge against the petitioner was that he purchased a land worth Rs.1,25,000/- on 22.03.1996 and the said purchase was without informing the Government in violation of the conduct rules applicable to the Government servants.

4. The petitioner in response to the above charges submitted his representation stating that his wife was working as a Government teacher in the State of Andhra Pradesh, the property was purchased by his father-in-



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law out of his retirement benefits and was gifted to his daughter as marriage seethana in 1996. His wife had duly informed her superior authorities of the purchase of property in her name by her father and necessary entries were also made in the service book and she had even paid due property tax for the said property. The property was purchased in 1996 and suddenly, the issue was raked up after a period of nearly 20 years and the charge came to be issued in the year 2015.

5. An enquiry was conducted notwithstanding the legitimate explanation by the petitioner and the enquiry officer, after completion of enquiry held the charge proved against the petitioner. The disciplinary authority, on the basis of the enquiry report imposed the punishment of censure by his order dated 15.02.2018. The punishment imposed on the petitioner was stated to be over on 15.02.2019. In the meanwhile, the 2nd respondent has called for the names of Co-operative Sub Registrars for drawing up the panel for promotion to the post of Deputy Registrar by recruitment by transfer. As the punishment period of censure was over on 15.02.2019, the petitioner was eligible to be included in the panel for



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promotion subsequent thereto.

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6. According to the petitioner, the Registrar of Co-operative Societies has directed the Additional Registrar of Co-operative Societies to send the names of the Co-operative Sub-Registrars in the establishment list as on 01.06.2016, having establishment number upto 450 for drawing up the panel and the petitioner establishment number was 363. The petitioner appeared to have also submitted his proforma to the 2nd respondent giving all the details. In this regard, the petitioner has submitted his representations on 14.02.2019 and 02.05.2019 to consider his claim for promotion. As there was no reply to his representations, the petitioner was constrained to approach this Court in W.P.No.17865/2019 seeking issuance of Writ of Mandamus, directing the 2nd respondent to include his name in the promotion panel for the year 2018-19. This Court ordered notice to the respondents.

7. While, the case was pending, the 1st respondent issued G.O.Ms.No.71 Co-operation, Food and Consumer Protection Department,



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dated 05.07.2019, by cancelling the earlier punishment of censure dated 05.02.2018 and remitted the matter to the 2nd respondent to proceed with the disciplinary action and pass suitable orders under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. According to the G.O. the punishment of censure awarded to the petitioner was not commensurate with the gravity of the charges framed against him. Hence, on a suo motu revision, a fresh departmental proceedings has been initiated against the petitioner for the same charge which was the subject matter of the charge sheet dated 25.08.2015. Challenging the G.O.Ms.No.71 dated 05.07.2019, W.P.No.22644 of 2019 has been filed.

8. Mr.V.Vijay Shankar, the learned counsel for the petitioner would submit that even the earlier charge sheet was belatedly issued on 25.08.2015 in respect of the allegation pertaining to the buying of property way back in the year 1996. Even otherwise, the fact of the matter was that his wife was a State Government teacher, employed in the State of Andhra Pradesh and when the property was purchased in her name, she had informed her authorities and it was also recorded in the service register of



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the petitioner's wife. The explanation of the petitioner was that the property was purchased by his father-in-law out of his retirement benefits and gifted the same to his daughter/wife of the petitioner.

9. The learned counsel has also drawn the attention of this Court to a copy of the service register wherein the purchase of the subject property is reflected in the document. In the entries, it is shown that the property was purchased on 22.03.1996 for a sum of Rs.1,25,000/-. This being the fact, the petitioner participated in the enquiry pursuant to the charge memorandum dated 25.08.2015 and despite the valid explanation to the charge, the Enquiry Officer held the charge proved. Thereafter, the Disciplinary Authority imposed the penalty of censure dated 15.02.2018. According to the learned counsel, the punishment of censure, being a minor penalty, the petitioner did not choose to challenge the same at the relevant time.

10. While matter stood thus, when the petitioner was due for promotion after the check period of one year, in order to scuttle his prospects of being promoted as Deputy Registrar, the administration, on a



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suo motu revision, has raked up the old issue and now, proceeding with the disciplinary action afresh, vide the impugned G.O.Ms.No.71 dated 05.07.2019. The action of the 1st respondent in issuing the said G.O., in the facts and circumstances of the case, is blatant abuse of power vested in him, which cannot be countenanced both in law and on facts.

11. According to the learned counsel, when the charge itself was simple in nature and the same had been properly explained with documentary proof, the repeated disciplinary action initiated against the petitioner for the same charge, amounted to malicious witch hunt for serving a collateral purpose and not for advancing good administration. In the said circumstances, the learned counsel would submit that the present G.O. dated 05.07.2019 under challenge along with the original charge memo dated 25.08.2015 and the punishment of censure dated 15.02.2018 are liable to be set aside as being illegal, arbitrary, unreasonable and malafide.

12. On behalf of respondents Mr.P.Ganesan, the learned Additional Government Pleader appeared and a counter affidavit has been filed.



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13. According to the counter affidavit, the charge against the petitioner was very serious in nature looking from the vigilance angle and therefore, the Government felt that the punishment of censure imposed earlier, by order dated 15.02.2018, was not commensurate enough to the gravity of the misconduct alleged against him. Therefore, the Government has taken a conscious decision to exercise its power of revision under the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and decided to proceed against the petitioner afresh for his misconduct. According to the counter affidavit, earlier, the writ petitioner was treated lightly with the imposition of lenient penalty of censure and such penalty was construed to be not proper and commensurate with the gravity of offence and hence, the impugned G.O. was issued. According to the counter affidavit, there is one more set of charge pending against the petitioner as on date under rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.

14. As far as the promotion to the post of Deputy Registrar is concerned, at the time of consideration of the panel for the year 2018-19,



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the petitioner was facing disciplinary action in pursuance of the minor penalty proceedings initiated against him, vide charge dated 25.08.2015 and the punishment itself was imposed finally on 15.02.2018. For the panel year 2018-19, the cut off date of all the Regional Office was on 01.10.2017. At that time, admittedly, the disciplinary action was pending against the petitioner. Even as on date, there is another set of charges pending against him by charge sheet dated 05.09.2019. Therefore, the claim for his promotion to the next higher post cannot be countenanced in law or on facts, even otherwise.

15. Mr.P.Ganesan, the learned Additional Government Pleader, appeared for the respondents and reiterated the above facts.

16. The learned counsel would submit that the claim of the petitioner, in any case, cannot be considered today in view of the pendency of another set of charges against him. The prayer to include his name in the panel for promotion to the post of Deputy Registrar of Co-operative Societies for the year 2018-19, in any case, cannot be considered, in view of the pendency of



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the disciplinary action at that point of time with reference to the earlier Charge Memo dated 25.08.2015. Therefore, he would submit that the writ petition is devoid of merits and substance and liable to be dismissed.

17. This Court considered the submissions of the learned counsel for the petitioner and the learned counsel for the respondents, perused the materials and the pleadings placed on record.

18. Before advertng to the submissions and the respective averments, originally G.O.Ms.No.71 dated 05.07.2019 was alone put to challenge, but subsequently, in view of the decision taken under the above said G.O. to continue with the disciplinary action, the petitioner sought amendment to the original prayer. In W.M.P.No.26354/2021 to include the original charge memo dated 25.08.2015 and the punishment order dated 15.02.2018 as part of the challenge and the consequential prayer for promotion to the post of Deputy Registrar for the panel year 2018-2019 . The said WMP has been ordered by this Court on 20.12.2021. Consequently, the consideration of this Court as on date would include examining the validity of the charge memo



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dated 25.08.2015 culminating in the imposition of the penalty of "censure"

dated 15.02.2018.

19. In view of the amendment to the prayer in the writ petition wherein original challenge being expanded to include the charge memo dated 25.08.2015 and the consequent punishment dated 15.02.2018, this Court has to necessarily examine the charge framed therein. The charge against the petitioner was that his wife Nagalakshmi bought property on 22.03.1996 in her name which was stated to be worth Rs.1,25,000/-. According to the administration, the petitioner had not informed or taken permission when the property was purchased in his wife's name. Therefore, the petitioner was alleged to have violated the conduct rules.

20. The petitioner had submitted his explanation to the charge stating that the property was purchased by his wife's father out of his retirement benefits and as marriage seethana, and gifted the same to his daughter . The details of the purchase of the property were also entered into the service records of the petitioner's wife who was a Government Teacher in the State



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of Andhra Pradesh. During the course of the arguments, the learned counsel has specifically drawn the attention of this Court to the document namely Service Register of the petitioner's wife wherein the fact of purchase of the property was reflected.

21. In the above established factual backdrop, this Court is unable to countenance how the petitioner could at all be found guilty of the said charge in the enquiry proceedings? Moreso, on the basis of the finding, the petitioner was strangely imposed with the penalty of censure on 15.02.2018. Although, the punishment was not put to challenge, originally, as the same having adverse effect only for a period of one year, however, the petitioner is now forced to challenge the charge memorandum dated 25.08.2015 itself, along with the punishment of censure dated 15.02.2018, and the consequent issuance of G.O.Ms.No.71 dated 05.07.2019.

22. The impugned G.O. ostensibly was issued when the claim for promotion to the next higher grade was overdue and the reason for raking up the charge once again, was that the earlier punishment of censure was not



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commensurate with the gravity of the misconduct alleged against the petitioner. By issuance of the said G.O., the earlier punishment of censure has been recalled which is indicative of the fact that severe penalty is contemplated after completion of fresh enquiry proceedings pursuant to the G.O. dated 05.07.2019.

23. The property in question was purchased in the year 1996 and after a period of 19 years, the charge memo came to be issued on 25.08.2015. From the records, this Court could not see any valid reason for the inordinate delay in issuing the charge memorandum. Even assuming the charge could be sustained ignoring the fact of the inordinate delay, in the face of the unimpeachable explanation given by the petitioner, the charge cannot be stated to have been established at all. This Court has gone through the order of the disciplinary authority and finds that no reference has been meaningfully made to the explanation by the petitioner. While rendering the findings, the enquiry officer appeared to have not appreciated the explanation of the petitioner in proper perspective. What could be gathered in the entirety of the circumstances of the case is that the



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disciplinary authority was bent upon punishing the petitioner regardless of the nature of explanation from him.

24. The petitioner was not alleged to have involved in any corrupt practices or misappropriation wherein the administration could not be faulted with for proceedings against him even after lapse of considerable time. Although the charge is stated to be issued from the vigilance angle, namely buying of property, however in the face of the clear explanation particularly with reference to entry of the purchase details in the service records of the petitioner's wife, a government servant in the neighbouring State, the matter ought to have rested there. But very surprisingly and strangely, the authority felt that the punishment ought to be imposed, notwithstanding the acceptable explanation by the petitioner to the allegation with the supportive materials.

25. In the teeth of the explanation given by the petitioner to the charge and also in the face of the fact that disciplinary enquiry was already concluded followed by punishment on 18.02.2018, reopening of the enquiry



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by issuance of the impugned G.O. relating to the same charge is nothing but a malafide and colourable exercise of power which cannot be countenanced in law.

26. In the counter, it is stated that the authority is empowered to review or revise his earlier decision or action on the basis of consideration of entirety of the facts and circumstances of the case. No doubt, the power is available under the relevant rules but the question before the Court is how the power has been exercised in a given situation. In this case, this Court cannot but come to an inevitable conclusion that the issuance of G.O.Ms.No.71 dated 05.07.2019 is tainted with malice in law and in fact and therefore, the same is liable to be set aside. There cannot be a better case for this Court to quash the impugned G.O. holding that the action of the 1st respondent in issuing the order is wholly on an extraneous consideration other than advancing a bonafide cause of administration.

27. In the counter affidavit, it is also stated that the petitioner has been issued with another charge memo under rule 17(b) of the Discipline



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and Appeal Rules, on 05.09.2019. However, this Court is not inclined to go into that aspect for the simple reason that the said charge sheet may not have any bearing on the prayers sought in these writ petitions. This Court is only inclined to consider the challenges in the writ petition and on the examination of the 'lis' in the facts and circumstances that led to the framing of charge memo dated 25.08.2015 and the consequential punishment dated 15.02.2018 and the issuance of G.O.Ms.No.71 dated 05.07.2019.

28. The petitioner has also filed another writ petition challenging the G.O.(D)No.24 Co-operation, Food and Consumer Protection Department (CD1) dated 03.02.2020. The said G.O. came to be issued in response to the request made by the petitioner herein for inclusion of his name for promotion as Deputy Registrar for the panel year 2018-2019. In that regard, the petitioner had approached this Court in W.P.No.17865 of 2019 and this Court vide order dated 19.12.2019, directed the authority concerned to take a decision on the request made by the petitioner. On consideration of the petitioner's claim and also with reference to the subsequent charge memorandum pending against him which is also under challenge before this



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Court, vide the said G.O., his request came to be rejected. Challenging the same, the said writ petition had been filed.

29. In effect, the claim of the petitioner is now sought to be rejected broadly on two grounds, one is that the charge memo dated 28.02.2015 has now been revived under the present G.O.Ms.No.71 dated 15.07.2019 and therefore, the disciplinary action is deemed to be pending against him from the date of issue of charge sheet on 25.08.2015 and hence, not entitled to be considered for promotion for the panel year 2018-19. The other ground is that even subsequently, another charge memorandum dated 05.09.2019 is pending finalisation and therefore, once again, not entitled to be considered for promotion.

30. As stated above, this Court is not inclined to refer to the other charge memorandum dated 05.09.2019 as it is the subject matter of another writ petition in W.P.No.34375/2019. As far as the present claim is concerned, this Court finds that the charge issued against the petitioner dated 25.08.2015 is not maintainable both on the ground of delay and also



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on merits as well. Therefore, the consequent order of punishment also cannot be sustained. Once, the charge memorandum dated 25.08.2015 and the consequent punishment order dated 15.02.2018 are to be held as illegal and unsustainable, the subsequent G.O.Ms.No.71 dated 05.07.2019 will also have to be automatically set aside. While concluding as above, it is to be held that the petitioner was deemed to have not suffered any disqualification for promotion for the post of Deputy Registrar for the panel year 2018-19. In that view of the matter, he is entitled to the grant of consequential relief of promotion as Deputy Registrar of Co-operative Societies for the panel year 2018-2019 (crucial date 01.10.2017)

31. For all the above stated reasons, the Writ Petitions are allowed. The impugned orders in Na.Ka.No.1575/2015/Pa.Tho. dated 25.08.2015 and Na.Ka.No.3126/2015.Pa.Tho. dated 15.02.2018 passed by the 4th respondent and G.O.Ms.No.71 dated 05.07.2019 passed by the 1st respondent and G.O.(D).No.24 Co-Operation Food and Consumer Protection (CD1) Department dated 03.02.2020 are set aside.



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32. As a consequence of quashing of the charge memo along with the punishment and the subsequent G.O.Ms.No.71 dated 05.07.2019 and also the other G.O.(D).No.24 Co-operation Food and Consumer Protection (CD1) Department dated 03.02.2020, the petitioner is entitled to be considered for promotion as Deputy Registrar for the panel year 2018-19.

33. The competent authority is directed to pass appropriate orders granting promotion to the petitioner as Deputy Registrar for the panel year 2018-2019, if he was otherwise fit in other aspects and grant him all attendant benefits on notional basis.

33. The competent authority is directed to pass orders within a period of six weeks form the date of receipt of a copy of this order.

34. No costs. Consequently connected miscellaneous petitions are closed.

17.03.2022

Index: Yes/No

Speaking Order: Yes/No

vsi

Note: Issue order copy on 21.03.2022

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To

1. The Principal Secretary to Government,
Cooperation, Food and Consumer Protection (CL1)
Department, Secretariat, Fort St.George,
Chennai - 600 009.
2. The Additional Chief Secretary to Government,
Cooperation, Food and Consumer Protection (CD1)
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Pre-delivery Order in
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and
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