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W.A.No.3480 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM:

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.No.3480 of 2019
and C.M.P.No.22280 of 2019**

G.Kamalakannan

... Appellant/Petitioner

Vs.

The Join Registrar of Co-operative Societies,
Krishnagiri Region,
Krishnagiri.

... Respondent/ Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order of His Lordship passed in W.P.No.19351 of 2018 dated 20.03.2019.

For Appellant : Mr.M.S.Palaniswamy

For Respondent : Mrs.S.Anitha,
Special Government Pleader



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J U D G M E N T

[Judgment of the Court was made by **D.Bharatha Chakravarthy, J.,**]

A. The Writ Appeal:

Writ Appeal is directed against the order of the learned Single Judge dated 20.03.2019 in W.P.No.19351 of 2018 in and by which, the writ petition filed by the appellant / petitioner, challenging the show cause notice dated 21.05.2018, has been dismissed by the learned Single Judge on the ground that the impugned order is only a show cause notice and thereby directing the appellant to submit his explanation.

B. The facts of the Case :

2. The factual matrix on which this Writ Appeal arises is that on 16.04.2005, a charge memorandum containing two charges against the appellant was issued. The charge being that while he was functioning as the Senior Inspector / Special Officer at K.K.161 Samoor Primary Agricultural Cooperative Society during the period from 25.05.2001 upto 21.12.2021, without even obtaining jewels, jewel loans were granted and the repayment amounts were not properly accounted for and has been misappropriated. The second charge is also relating to the same transaction, but however it relates to



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non-exercise of his supervisory duties.

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3. On the said charges, enquiry proceedings were completed and by an order dated 29.09.2009, a punishment of '*one-increment cut with cumulative effect*' was imposed. On the very same charges, a criminal complaint was also lodged and the same was investigated for the offences under Section 120(B) read with Sections 109, 408, 409, 465, 471 and 477 of the *Indian Penal Code* by the Inspector of Police CCIW CID in Crime No.14 of 2003. After investigation, the charge sheet was filed proposing totally 9 accused, including the appellant, as guilty of the above charges.

C. The Trial :

4. The case was taken on file at C.C.No.184/2004 by the Judicial Magistrate, Pallacode and after trial, the learned Magistrate, even though found the accused guilty of the offences, however, exercising powers under **Section 4** of the **Probation of Offenders Act, 1958** (*hereinafter referred to as the 'Act'*) released the appellant on probation, without imposing any sentence on them on conditions which were imposed on the said judgement.

D. Findings of the Court:



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5. Now, after the receipt of the said judgment, the impugned show cause notice dated 21.05.2018 was issued to the appellant directing him to show cause as to why further punishment shall not be imposed on him under Section 17(c) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. The said show cause notice is challenged by the appellant in the present writ petition No.19351 of 2018 which is now dismissed, aggrieved by which, the present Appeal is filed before this Court.

6. Heard *Mr.M.S.Palaniswamy*, learned counsel for the appellant and *Mrs.S.Anitha*, learned Special Government Pleader appearing for the respondent.

E. The Submissions :

7. The learned counsel for the appellant would submit that in this case, firstly, already a punishment on the same set of charges has been imposed and once again on the same set of charges, the respondent has decided to go ahead to complete the disciplinary proceedings, without waiting for the outcome of the criminal case and imposed a punishment. There is no question of again imposing a second punishment after the outcome of the criminal case. In



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support of his contention, the learned counsel relied upon the judgment of this Court in ***D.Narayanan vs. District Revenue Officer, Virudhunagar District***¹.

Secondly, the learned counsel also brought to the notice of this Court that even though the Judicial Magistrate thought it fit to convict the appellant, no sentence was imposed on him and he was released under Section 4 of the Act. Once he is released under Section 4 of the Act, he is entitled for the benefit under Section 12 of the Act, which removes any disqualification attaching to the said conviction. In that view of the matter, when the contention of the appellant goes to the root of the matter, the learned Judge ought to have held that the very show cause notice was without jurisdiction and ought not to have relegated the appellant to submit the explanation.

8. Per Contra, the learned Special Government Pleader would submit that in any event, the order impugned in the writ petition is only a show cause notice and whatever the contention is raised before this Court, can be raised in the explanation and the Authorities would consider the same on merits and dispose of the show cause notice. Secondly, she would submit that when a finding of conviction has been passed by the Judicial Magistrate, the

¹ (2009) 4 MLJ 708



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Authorities have rightly issued the show cause notice as per Rule 17(c) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. Therefore, she prayed that the Writ Appeal be dismissed.

9. We have considered the rival submissions made on either side and perused the material records in this case.

F. The Discussion:

10. Firstly, we have gone through the charges levelled against the petitioner both departmentally as well as in the criminal case. The charges are one and the same. Therefore, in that view of the matter, when the respondent Authorities, without awaiting the criminal case, have decided to proceed further with the matter and have already imposed the punishment, there is no question of again imposing a second punishment in the said same charge. In this regard, the judgement relied upon by the learned counsel for the appellant squarely covers the issue and it is useful to extract paragraph nos.16 & 17 of the said judgment in **D.Narayanan's case** (cited supra), which reads as hereunder:

“16. In the present case, it was open to the departmental authorities to initiate department proceeding, which they did. It was also open to them to conclude the



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departmental proceedings even before the conclusion of the criminal trial. In the departmental proceeding, after the delinquent was found guilty, certain punishment was imposed. The charge in the criminal case was on the basis of very same allegation of temporary misappropriation. Even though the petitioner had already been subjected to a punishment on the very same allegation of temporary misappropriation, after the conclusion of the criminal case, the department has thought it fit to impose a second punishment of dismissal from service by taking resort to the procedure contemplated under Rule 17(c)(1) of TNCS(D&A) Rules.

17. Rule 8 of TNCS(D&A) Rules contemplates the penalties which may be imposed upon a person who is a member of the civil service. Items (i) to (iii), (v) and (ix), that is to say censure, fine, withholding of increment or promotion and suspension, are considered as minor penalties; whereas Item Nos.(iv), (vi), (vii) and (viii), that is to say reduction to a lower rank in the seniority list or to a lower post or to a lower time-scale or compulsory retirement, removal from service or dismissal from service are considered to be major penalties. Rule 17(a) contemplates the procedure relating to imposing of minor penalties, as envisaged under Rule 8(i) to (iii), (v) and (ix); whereas Rule 17(b) contemplates the procedure relating to the imposition of major penalties. Rule 17(c) is only by way



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of exception to rule 17(b), as apparent from the opening words of Rule 17(c)(i)(1) to the effect that the requirements of sub-rule(b) shall not apply. In other words, a careful and combined reading of all the provisions would make it clear that it is open to the departmental authorities either to follow the procedure contemplated under Rule 17(b) or the procedure contemplated under Rule 17(c). However, when Rule 17(b) has already been followed and a punishment is imposed, it would not be permissible for the departmental authorities to again subject the very same delinquent to a fresh punishment on the self-same allegation on the ground that such conduct has led to his conviction in a criminal case, which, in our considered opinion, would amount to double jeopardy”.

Therefore, the Authorities, have no jurisdiction, whatsoever, to issue the show cause notice. In view of the same, the other issues raised in this case need not be gone into.

G. The Result:

11. In the result, the order of the learned Single Judge dated 20.03.2019 is set aside and Writ Appeal is allowed and the writ petition filed by the petitioner in W.P.No.19351 of 18 is ordered as prayed for. However, in the



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facts and circumstances of the case, there will be no order as to costs.

Consequently, connected miscellaneous petition is closed.

(J.N.B., J.,) (D.B.C., J.,)

07.06.2023

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order / Non-Speaking Order

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To:

The Joint Registrar of Co-operative Societies,
Krishnagiri Region,
Krishnagiri.



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J. NISHA BANU, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,

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Judgment made in
W.A.No.3480 of 2019

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