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W.P.No.44094 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.44094 of 2016

Durai Munusamy

.. Petitioner

VS

1.The Government of Tamilnadu
Rep. By its Secretary,
Co-operation, Food and Consumer
Protection (CD2 Department),
Fort St.George, Chennai – 9.

2.The Registrar of Co-operative Societies,
No.170, NVN Maaligai,
Kilpauk, Chennai – 10.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the charge memo issued by the second respondent in Na.Ka.91730/99.Ve.Sa.1(3) dated 28.03.2000 and consequent order of the first respondent in G.O.(3D).No.31, Co-operation, Food & Consumer (CD2) Department dated 30.05.2003 quash the same and direct the respondents to permit the petitioner to retire from service and pay all monitory benefits with 12% interest from the date of superannuation till payment.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.K.H.Ravikumar
Government Advocate



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ORDER

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With the allegation that the petitioner herein while serving as the Secretary for the period between 28.12.1995 and 12.06.1997 and as a Special Officer between 01.08.1996 and 31.10.1996, has indulged in some irregularities in the sale of cotton in the Krishnagiri Co-operative Marketing Society, the charges came to be framed on 28.03.2000. Apart from this sole charge, no further charges were framed against the petitioner herein.

2. While so, when the petitioner reached the age of superannuation on 30.05.2003, the first respondent herein had passed an order on the same day, not permitting the petitioner to retire and placed him under suspension. The petitioner, therefore, challenges the charge-memo as well as the consequential orders in the present writ petition.

3. The learned counsel for the petitioner predominantly raised the ground of delay in conclusion of the disciplinary action initiated against the petitioner herein. According to him, the charge-memo relates to delinquency that had happened in the year 1996 and though the charges were framed in the year 2000, no further proceedings had taken place. The learned counsel submitted that



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the petitioner herein is now 78 years and serious prejudice has been caused to him owing to the inaction on the part of the respondents in keeping the proceedings pending indefinitely.

4. Per contra, the learned Government Advocate had placed reliance on the averments made in the counter affidavit and submitted that, apart from framing of the charges, a criminal case was also registered against the petitioner in connection with the same delinquency in Cr.No.254 of 2003 on the file of the District Munsif-cum-Judicial Magistrate, Pochampalli, now transferred to the Judicial Magistrate – II, Krishnagiri and the same is pending. As per the instructions of the respondents, the learned Government Advocate submitted that since the criminal proceedings are not yet concluded, they would take further action on the fate of the disciplinary proceedings, after its conclusion.

5. The charge against the petitioner was framed, not for his involvement in the criminal case. If that be so, this Court is rather surprised that the respondents have chosen to await for the final outcome of the criminal case, when the same is not the subject matter of the charge-memo itself. When the petitioner herein was placed under suspension through the order dated 30.05.2003, the



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reason assigned therein was that grave charges and allegations are pending against him. Though the charge-memo was framed in the year 2000 and the petitioner was due to retire in 2003, the respondents have simply kept the matter idle. Apart from framing of the charges, no enquiry officer was appointed, though the petitioner had given his explanations to the levelled charges. It is rather unfortunate that the respondents have not chosen to proceed any further in the disciplinary action and have chosen to await for the outcome of the criminal case, when the pendency of the criminal case was not the subject matter of the charge-memo itself.

6. In view of the inaction on the part of the respondents in proceeding further on the charges levelled against the petitioner herein, the charge-memo against the petitioner itself cannot be sustained. It is needless to point out that serious prejudice would have been caused to the petitioner herein including the pendency of the proceedings. Since there is no justification on the part of the respondents, to await for the final outcome of the criminal proceedings, this Court is inclined to interfere with the disciplinary action initiated against the petitioner.



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7. In the light of the above findings, the charge memo issued by the second respondent in Na.Ka.91730/99.Ve.Sa.1(3) dated 28.03.2000 and the consequential order of the first respondent in G.O.(3D).No.31, Co-operation, Food & Consumer (CD2) Department dated 30.05.2003 are hereby quashed. Accordingly, there shall be a direction to the first respondent herein to forthwith pass orders, notionally retiring the petitioner herein from his service from 30.05.2003 and thereby disburse all the service and other monetary benefits, including the retirement and pensionary benefits. In view of the fact that the petitioner is now 78 years old senior citizen, the Government shall endeavour to pass orders immediately, in any event, within a period of two weeks from the date of receipt of a copy of this order.

8. The writ petition stands allowed accordingly. No costs.

02.01.2023

Index : Yes/No
Neutral Citation : Yes/No
ssm



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To

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M.S.RAMESH,J.

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