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W.P.No.31861 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.31861 of 2013

V.Chellachamy

.. Petitioner

Versus

1. The Registrar of Co-operative Societies,
NVN Natarajan Maaligai,
Kilpauk,
Chennai - 600 010.

2. The Joint Registrar of Co-operative Societies,
Virudhunagar Region,
Virudhunagar.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the 2nd respondent in proceedings Na.Ka.2337/13 Pa.Tho, dated 10.09.2013; the impugned appellate order issued by the 1st respondent in proceeding Na.Ka.104914/2013 O.Na.3, dated 27.02.2019 and the consequential impugned order issued by the 2nd



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respondent in proceedings Na.Ka.2337/13 Pa.Tho., dated 09.08.2019 and to quash these orders and to consequently, direct the respondents to regulate the suspension period of the petitioner from 12.03.1998 to 29.06.2005 as duty period and disburse the full pay and allowances with all consequential service benefits.

* Prayer amended as per the order in W.M.P.No.31657 of 2022 in W.P.No.31861 of 2013, dated 27.02.2024.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.V.Nanmaran,
Additional Government Pleader

ORDER

This Writ Petition is filed seeking to quash the proceedings of the second respondent in Na.Ka.No.2337/13 Pa.Tho., dated 10.09.2013 and to direct the respondents to regulate the period of suspension of the petitioner from 12.03.1998 to 29.06.2005 as duty and disburse the full pay and allowances with all consequential service benefits to him.

2. The petitioner was working as Senior Inspector of Co-operative



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Societies under the respondents. While so, he was suspended from the service. The relevant portion of the order of suspension reads as follows:-

" Whereas a complaint against Thiru V.Chellasamy, Senior Inspector of Cooperative Societies of a Criminal Offence is under investigation and whereas in the circumstances of the case, it is necessary in the public interest to place the said Thiru V.Chellasamy under suspension from service."

3. After the investigation was completed, the petitioner was prosecuted before the learned Judicial Magistrate No.II, Virudhunagar in C.C.No.170 of 2001 for alleged offences under Sections 408 read with 109 and 477 of the Indian Penal Code and finally, by a judgment, dated 13.12.2012, he was acquitted of the charges. In the meanwhile, his suspension was revoked only on 30.06.2005. After the acquittal in the Criminal Court, the petitioner made a representation on 25.04.2013 praying for regularisation of the period of suspension. Since the same was rejected by the impugned order, dated 10.09.2013, the petitioner preferred an appeal and also filed the present Writ Petition pending the appeal. This Court even



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while entertaining the Writ Petition, by an interim order, directed that the appeal be disposed of, pursuant to which, the appeal was also rejected. The petitioner also made one more representation and again, the respondents reconsidered the matter and rejected his prayer to consider the period of suspension as duty. Accordingly, challenging all three orders, the relief in the present Writ Petition was amended.

4. The case of the petitioner is that once the petitioner was suspended pending investigation into a criminal case and if subsequently, the petitioner is acquitted in the criminal case, as per the Ruling No.9 of the Government under F.R.54-B, the period has to be treated as duty.

5. The Writ Petition is resisted by the respondents by filing a detailed counter-affidavit. The case of the respondents is that it is not a case of suspension pending the criminal case alone. Already, Disciplinary Proceedings were also initiated against the petitioner and a minor



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punishment was also imposed on 01.01.1994. This apart, during the relevant time, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the *Act*') was also initiated and ultimately, the same culminated into an order passed under Section 87 of the *Act* imposing a surcharge of Rs.1,54,096.85 ps against the petitioner. In view thereof, the respondents contend that Ruling No.9 of the Government under F.R.54-B is not applicable, but, only the Ruling No.11 under F.R.54-B is applicable. As per Ruling No.11 under F.R.54-B, in such cases, the period can be regularised as per F.R.54. Therefore, the competent authority thought it fit to regularise it as eligible leave. Therefore, the impugned orders do not call for any interference by this Court.

6. Heard *Mr R.Prem Narayan*, learned Counsel for the petitioner and *Mr V.Nanmaran*, Additional Government Pleader for the respondents.

7. *Mr.R.Prem Narayan*, learned Counsel for the petitioner, reiterating



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the submissions made in the Writ Petition, took this Court through F.R.54-B and also the Ruling No.9 of the Government made vide G.O.Ms.No.228, Personnel and Administrative Reforms (Personal-J) Department, dated 13.04.1989 and also the Ruling No.11 made vide G.O.Ms.No.84, Personnel and Administrative Reforms (FR.V) Department, dated 24.03.1995. According to the learned Counsel for the petitioner, it is only Ruling No.9 which would be applicable. In this case, there were no simultaneous Departmental Proceedings. The impugned suspension order clearly states that the suspension is made only pending the investigation into the criminal case. The Departmental Proceedings were initiated by a charge memorandum, dated 01.03.1993 and punishment was imposed on 01.01.1994. Therefore, the order of suspension which was issued on 31.03.1998 can have no connection with the same. The proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 culminating into surcharge proceedings under Section 87 of the *Act* cannot be deemed to be Disciplinary Proceedings and therefore, the suspension cannot come



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under Ruling 11. In support of his submission, the learned Counsel also relied upon the judgment of this Court in ***R.Sivaraj Vs. The Deputy Secretary to Government and Anr. (W.P.No.2449 of 2017)***, dated 27.01.2022.

8. Per *contra*, *Mr.V.Nanmaran*, learned Additional Government Pleader, relying upon paragraphs Nos.8 to 12 of the counter-affidavit would submit that this is a case where there were not only criminal proceedings against the petitioner but also the Departmental Proceedings as well as an enquiry under Section 81 of the *Act* which culminated into a penalty of a sum of Rs.1,54,096.85 ps being levied upon the petitioner. In such a case, it is only Ruling 11 under F.R.54 that is applicable and therefore, the period has been rightly treated as admissible leave under F.R.54. He would further submit that as far as the judgment submitted by the learned Counsel for the petitioner is concerned, that was a case where Departmental Proceedings were initiated after acquittal in Criminal Case and therefore, the same may



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not apply to the present case where the other proceedings were initiated much before the acquittal in the criminal case.

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9. I have considered the rival submissions made on either side and perused the material records of the case.

10. The question to be decided is whether the period from 12.03.1998 up to 29.06.2005 is to be treated as a period spent on duty.

11. The petitioner is an employee under the Co-operative Societies department of the Government of Tamil Nadu working under respondent Nos.1 and 2 and therefore, the Fundamental Rules are applicable. As far as the regularisation of the period of a suspended employee after his reinstatement is concerned, the same is dealt with by F.R.54-B. The relevant portion of the same is extracted hereunder :-

"54-B-1.



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(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended :

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation (within sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection, within such period which, in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice."

12. The Government had made Rulings under the said Fundamental



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Rules and Ruling 9 issued vide G.O.Ms.No.228, Personnel and
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Administrative Reforms (Personal-J) Department, dated 13.04.1989 reads as follows :-

" 9. Where a Government servant is,___
(a) Placed under suspension in view of the fact that a complaint against him of any criminal offence is under investigation or trial; or
(b) dismissed or removed from service or compulsorily retired on the ground of conduct which has led to his conviction on a criminal charge and the Government servant is subsequently reinstated in service on his acquittal by the Court either on merits or on the ground that the charge has not been proved against him or by giving benefit of doubt or on any other technical ground, or on the ground that he has been pardoned by the Court as he turned approver based on his judicial confession, he must be regarded as having been prevented from discharging his duties and the period of his absence including the period of suspension shall be treated as duty for all purposes and he shall be paid full pay and allowances which he would have been entitled to, had he not been under suspension, or dismissed or removed or compulsorily retired from service."

13. Ruling 11 issued vide G.O.Ms.No.84, Personnel and
Administrative Reforms (FR.V) Department, dated 24.03.1995 reads as follows:-

" 11. When a Government servant is placed under



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suspension where an enquiry into grave charges against him is pending or contemplated and a criminal proceedings are also instituted simultaneously in respect of the same charges and subsequently he is reinstated into service, the period of suspension shall be ____

(i) treated as duty if there is a specific order or direction of a court of competent jurisdiction to this effect notwithstanding the fact that a penalty has been imposed in the departmental inquiry;

(ii) regulated under F.R.54, only after the final order of the criminal court is delivered in which he is acquitted notwithstanding the fact that departmental enquiry has been finalised and a penalty has also been imposed upon him prior to the finalisation of criminal proceedings."

14. In the instant case, it can be seen that the suspension order itself clearly states that the suspension is made only pending the investigation of the criminal case. Even otherwise, there were no Disciplinary Proceedings on the date of suspension or after the date of suspension. The Disciplinary Proceedings which were relied upon by the respondents were initiated in the year 1993 and the order of punishment itself was made on 01.01.1994. Therefore, the suspension order can have no connection with the said Disciplinary Proceedings.



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15. The second reason pleaded by the respondents is that the proceedings under Section 81 of the *Act* were also simultaneously initiated which ultimately culminated into surcharge proceedings under Section 87 of the *Act*. A careful perusal of Section 81 of the *Act*, it would be clear that an inquiry under Section 81 of the *Act* is an inquiry into the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society. It is a fact-finding inquiry and not a Disciplinary Inquiry as against a particular person. Similarly, the surcharge proceedings under Section 87 of the *Act* are for recovering the loss of society and are not a punishment that is imposed against an individual. Useful reference in this regard can be made to the decision of the Full Bench of this Court in ***S.Andiannan v The Joint Registrar and Anr.***¹. In that view of the matter, those proceedings under Sections 81 or 87 of the *Act* cannot be deemed to be "an inquiry into the

¹ (2015) 4 CTC 1



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grave charges against the petitioner which were pending or contemplated" and therefore, I am unable to uphold the contention of the learned Additional Government Pleader that the case of the petitioner falls under Ruling 11. Accordingly, I hold that as per Ruling 9, when a suspended employee is reinstated, the same has to be treated as duty for all purposes and he shall be paid the full pay and allowances to which he would have been entitled to.

16. In view thereof, this Writ Petition is allowed on the following terms:-

(i) The impugned order issued by the second respondent in Na.Ka.No.2337/13 Pa.Tho., dated 10.09.2013; impugned appellate order issued by the first respondent in Na.Ka.No.104914/2013 O.Na.3, dated 27.02.2019 and the consequential impugned order issued by the second respondent in Na.Ka.No.2337/13 Pa.Tho., dated 09.08.2019 are set aside;

(ii) The period of suspension of the petitioner i.e., from 12.03.1998 to 29.06.2005 shall be treated as duty and the petitioner is entitled to all the



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balance of pay and emoluments due to him;

(iii) The same shall be paid to the petitioner within three months from the date of receipt of a copy of this order without any interest;

(iv) The petitioner will also be entitled to such other consequential service benefits by treating his period of suspension as duty;

(v) There shall be no order as to costs.

27.02.2024

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Registrar of Co-operative Societies,
NVN Natarajan Maaligai,
Kilpauk,
Chennai - 600 010.

2. The Joint Registrar of Co-operative Societies,
Virudhunagar Region,
Virudhunagar.



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D.BHARATHA CHAKRAVARTHY, J.

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