



W.P.(MD)No.17201 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

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THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.17201 of 2024

and

W.M.P.(MD).No.14826 of 2024

B.Illamaran

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
O/o. the Joint Registrar of Co-operative Societies,
Ramnad.

2.The Deputy Registrar of Co-operative Societies,
Paramakudi Region,
Ramnad Division,
Ramnad.

3.The Managing Director,
Q 1102 Kamuthi Co-operative Societies,
Kamuthi-626 603.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned charge memo issued by the third respondent in Na.Ka.No.1/2024, dated 09.07.2024 and quash the same as illegal.



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For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.K.S.Selvaganesan,
Additional Government Pleader

ORDER

By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.C.Jeganathan, learned counsel appearing for the petitioner and Mr.K.S.Selva Ganesan, learned Additional Government Pleader appearing for the respondents.

3. The petitioner has been kept under suspension with effect from 28.04.2020. The petitioner has filed this Writ Petition challenging the impugned charge memo issued by the third respondent in Na.Ka.No.1/2024, dated 09.07.2024 on the ground that the charge memo has been issued after a delay of four years from the date of superannuation of the petitioner.

4. It is submitted by the learned counsel appearing for the petitioner that the Rules of the Co-operative Societies does not permit any disciplinary proceedings subsequent to the retirement of an individual.



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WEB COPY 5. However, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner was not allowed to retire and he was kept under suspension with effect from 28.04.2020 and in fact, a criminal case has also been registered against him in Crime No.03 of 2017 and hence, the petitioner cannot claim that the charge memo has been issued to him subsequent to his retirement.

6. The petitioner has been given with the charge memo on the allegation that he is responsible for not recovering the loan amount sanctioned during the years 1987, 1990, 1999, 2000, 2001, 2003, 2004, 2013, 2014, 2017. It is stated that every deficiency has not been noticed during the audit conducted for the Financial Years 2017-2018 and 2018-2019 and it was found out only after the petitioner attaining the age of superannuation on 30.04.2020.

7. In fact, the respondents were aware about the audit report pertaining to the Financial Years 2017-2018 and 2018-2019 and by the time, the petitioner was placed under suspension and consequently, he was not allowed to retire. Having kept the petitioner under suspension for four years and without issuing any charge memo for four years, now the charge memo has been issued by



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stating that there are laches on the part of the petitioner in not taking steps to recover the loan pertaining to the Financial years 1987 to 2017.

8. In fact, the petitioner was held responsible even for those loans which were not recovered during the period of the previous Secretary. Attention of this Court was drawn to the earlier judgment of this Court held in W.A.No.1757 of 2022 dated 24.08.2022. In the said case also, the petitioner who was employed in the Co-operative Society was given with a charge memo after four years taking serious note of the delay, which has been observed as under:

“4. Having heard learned advocates for the respective parties and having considered the material on record this Court finds that, the action of the appellant of withholding the retirement benefits i.e. gratuity, leave encashment etc., of the writ petitioner on the date of his retirement (vide order dated 31.03.2016 impugned in writ petition), though may be perceived by the employer to be within his competence, in any case, in the present case it could not be termed to be just and proper, and interference therein by learned Single Judge is just and proper. We note that, the alleged irregularity is of the year 2011-2015. The charge memo was issued on 20.03.2020. The same is done almost after four years (just ten days short of four years) after the superannuation retirement and the same is just to show that the said exercise was within competence. The bar of four years is not mere mathematical calculation. It has to be weighed with the alleged



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misconduct. If the alleged misconduct starting from the year 2011 is seen on 20.03.2020, any illegality which is after 20.03.2016 could not be termed to be within the competence of the employer. Further non initiation of disciplinary proceedings for almost four years (just ten days short of four years) is simple colourable exercise of power and therefore the final direction given by learned Single Judge, according to us, can not be said to be erroneous. Therefore this appeal needs to be dismissed.”

9. However, Mr.K.S.Selva Ganesan, learned Additional Government Pleader appearing for the respondents made distinction to the above judgment by stating that in the case involved in W.A.No.1757 of 2022, no charge against that petitioner was pending, but in the instant case, a criminal case is pending against the petitioner herein.

10. It is to be noted that even when serious criminal case has been registered against the petitioner and the petitioner was placed under suspension for the reasons best known to the respondents the petitioner has not been given with the charge memo even on the allegation that a criminal case was pending. hence, I feel that the petitioner is entitled to take the advantage of the undue delay caused by the respondents in the light of the decision laid down by the Division Bench in W.A.No.1757 of 2022. Even now, the trial in the criminal



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case is said to be pending on similar allegations. It is needless to state that the standard of proof required for the departmental proceedings and the criminal proceedings are different and nothing would have prevented the respondents from initiating disciplinary proceedings irrespective of the pendency of criminal proceedings. The delay in initiating any action would defeat the interest of justice and that would vitiate the entire proceedings and nothing will be fructified by subjecting the petitioner to disciplinary proceedings on the charge memo now furnished to him.

11. In view of the above, the Writ Petition is **allowed** and the charge memo issued by the third respondent in Na.Ka.No.1/2024, dated 09.07.2024 is quashed. No costs. Consequently, the connected miscellaneous petition is closed.

25.07.2024

Index:yes/no

Internet:yes/no

Ncc : yes/no

TSG

To

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O/o. the Joint Registrar of Co-operative Societies,
Ramnad.



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R.N.MANJULA, J.

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