



W.P.(MD)No.28665 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 22.01.2025

CORAM:

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.28665 of 2024

Mr.M.V.Raja

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai District.

2. The Deputy Registrar of Co-operative Societies (Housing),
Madurai Region,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to direct the respondents to permit petitioner to retire from service and disburse the petitioner's retirement benefits on the basis of order passed by the 2nd respondent dated 08.11.2023.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.A.Baskaran
Additional Government Pleader



W.P.(MD)No.28665 of 2024

WEB COPY

ORDER

Mr.A.Baskaran, learned Additional Government Pleader takes notice on behalf of the respondents.

2. The instant writ petition has been filed by the Co-operative Sub-Registrar seeking a mandamus directing the respondents to permit him to retire from service and for disbursement of terminal benefits on the basis of the order passed by the 2nd respondent dated 08.11.2023.

3. The petitioner herein was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 22.02.2013 and an additional charge memo was also issued on 09.10.2013. The petitioner has submitted his explanation, after conducting the enquiry, final orders were passed on 28.04.2017 imposing a punishment of stoppage of increment for a period of 2 years with cumulative effect. The petitioner has accepted the said punishment and the order of punishment has attained finality.



W.P.(MD)No.28665 of 2024

WEB COPY

4. On 30.04.2019, the 1st respondent has issued an order not permitting the petitioner to retire and to retain him in service on the ground that an enquiry is contemplated into the grave charges and surcharge proceedings are binding as against the individual. Thereafter, a charge memo was issued to the writ petitioner on 27.09.2019. The petitioner has filed W.P.(MD)No.398 of 2020 on the ground that the 2nd charge memo is based upon the same said allegations which were made in the 1st charge memo. This Court by an order dated 08.03.2022 had dismissed the writ petition. Challenging the same the petitioner herein had filed W.A(MD).No.395 of 2022 and the Hon'ble Division Bench while dismissing the said writ appeal observed that the petitioner has to give a representation to the 2nd respondent herein to find out whether the charges in the 1st charge memo and the 2nd charge memo are based on similar set of facts or not. On receipt of such explanation from the writ petitioner, the 2nd respondent was directed to consider the same and pass orders on merits and in accordance with law.



W.P.(MD)No.28665 of 2024

WEB COPY

5. In compliance with the orders of the Hon'ble Division Bench, the 2nd respondent has passed an order on 08.11.2023 to the effect that the charges found in the 2nd charge memo, are based upon the same set of allegations which are found in the 1st charge memo. A copy of the said order was forwarded to the 1st respondent and the writ petitioner. It is the grievance of the writ petitioner that since the 2nd charge memo is found to have been based upon on the same set of facts as found in the 1st charge memo, he should have been permitted to retire from service and terminal benefits should have been disbursed. Since no orders were passed, the present writ petition has been filed seeking to permit the petitioner to retire and for disbursement of terminal benefits.

6. Per contra, the learned Additional Government Pleader appearing for the respondents relying upon the counter affidavit filed by the 2nd respondent, contended that the report of the 2nd respondent herein dated 08.11.2023 has been forwarded to the enquiry officer who was appointed to enquire into the allegations arising out of the 2nd charge memo. Therefore, the enquiry officer has to take a call upon the report of the 2nd



W.P.(MD)No.28665 of 2024

respondent dated 08.11.2023 and submit a report to the said effect. Until such report is received by the Government, the question of permitting the petitioner to retire from services does not arise. He further contended that whether the 1st and 2nd charge memo are based upon the same set of facts or not can be considered only during the enquiry proceedings and therefore, the petitioner has to wait for the result of the enquiry proceedings.

7. I have considered the submissions on either side and perused the materials available on record.

8. It is the contention of the learned counsel for the petitioner that the 2nd charge memo dated 27.09.2019 is based upon the same set of facts as found in the 1st charge memo dated 22.02.2013. According to him, when punishment has already been imposed based upon the same set of facts, the question of again issuing a 2nd charge memo on the same set of facts does not arise which amounts to harassing the writ petitioner.



W.P.(MD)No.28665 of 2024

WEB COPY

9. A perusal of the order of the Hon'ble Division Bench in W.A. (MD)No.395 of 2022 reveals that the Division Bench has directed the 2nd respondent to consider the explanation submitted by the writ petitioner and to arrive at finding whether the 2nd charge memo is based upon the same set of facts found in the 1st charge memo or not. Accordingly, the 2nd respondent has already arrived at a finding that the allegations found in the 2nd charge memo are on the same set of facts as in the 1st charge memo. In such circumstances, the question of conducting another enquiry based upon the 2nd charge memo does not arise. Therefore, the petitioner cannot be retained in service citing that an enquiry arising out of the 2nd charge memo dated 27.09.2019 is still pending.

10. In view of the above said deliberations, the respondents are directed to pass orders permitting the petitioner to retire from service with effect from 30.04.2019 and disburse the eligible terminal benefits and pensionary benefits within a period of twelve (12) weeks from the date of receipt of a copy of this order.



W.P.(MD)No.28665 of 2024

WEB COPY

11. The writ petition is allowed in view of the above observations and directions. No costs.

22.01.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
rgm

To

1. The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai District.
2. The Deputy Registrar of Co-operative Societies (Housing),
Madurai Region,
Madurai District.



WEB COPY



W.P.(MD)No.28665 of 2024

R.VIJAYAKUMAR, J.

rgm

W.P.(MD)No.28665 of 2024

22.01.2025