
(2014) 06 MAD CK 0215
In the Madras High Court
Case No : Writ Appeal No. 1173 of 2012

K. Krishnan

APPELLANT

Vs

The Additional Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Citation : (2014) 6 MLJ 234 : (2014) WritLR 846

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Judgement

M. Sathyanarayanan, J.—The petitioner in W.P. No. 13346 of 2010, is the appellant and he was dismissed from service vide order of the second respondent, dated 23.05.2007 and it was also confirmed in the order dated 30.04.2010, passed in the revision petition, by the first respondent. The appellant made a challenge to both the orders by filing the abovesaid writ petition and after contest, it came to be dismissed on 11.11.2011 and aggrieved by the same, has filed this writ appeal.

2. The facts leading to the filing of the writ petition have been narrated in detail by the learned Judge in the impugned order passed in the writ petition and therefore, it is unnecessary to re-state the facts once again, except to state the necessary facts for the disposal of this writ appeal.

3. The appellant, while working as the Secretary in the services of the third respondent, was issued with an order of suspension on 26.07.2002 and subsequently issued with a charge memo and additional charge memo during the year 2002. The appellant submitted his explanation on 20.11.2002 and after enquiry, enquiry report was submitted on 27.01.2003 and the Disciplinary Authority has passed a final order on 10.03.2003 imposing the punishment of postponement of increment for five years without cumulative effect and the said order was not put to challenge and it has become final. On 14.01.2004, the appellant herein was suspended from service by the Special Officer/third

respondent herein and on 30.04.2004, he was issued with a charge memo and according to him, it was on the same set of allegations, except one charge. The appellant submitted his explanation to the charge memo, on 04.05.2004 and not satisfied with the explanation offered by the appellant herein, Enquiry Officer was appointed by the third respondent Bank and he submitted his enquiry report dated 20.09.2004.

4. The appellant herein filed W.P. No. 23052 of 2004 challenging the order of suspension, dated 14.01.2004, and initially interim order was granted and he was reinstated into service on 03.01.2005 and ultimately, the writ petition was dismissed on 08.09.2006 and on 22.01.2006, the Common Cadre Committee has placed the appellant under suspension.

5. According to the appellant, no such charge memo was issued and however, a second show cause notice was issued by the Common Cadre Authority pursuant to the earlier enquiry report dated 20.09.2004, for which, he has submitted his explanation. The Common Cadre Authority not satisfied with the explanation offered by the appellant herein to the second show cause notice, passed the order of dismissal dated 23.05.2007. The appellant, aggrieved by the same, filed revision before the first respondent, who dismissed the same on 30.04.2010 and challenging the legality of the same, the writ petition came to be filed.

6. The appellant has raised very many grounds in the writ petition and the primordial ground is that the Government has passed an order in G.O.Ms. No. 55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000, constituting Common Cadre service for Primary Agricultural Co-operative Bank and Regulation 28 speaks about the penalty proceedings, both major and minor and as per Regulation 28(v), "no cadre employee shall be imposed with the above penalties by an authority other than cadre authority, provided that the Board of the Primary Agricultural Co-operative Bank, under which, a cadre employee is for the time being employed shall have the power to impose on such employee the penalty of censure or stoppage of increment upto two years without cumulative effect".

7. The appellant further submitted that as per Regulation 29(a)(i), "the cadre employee shall be served with a charge sheet duly approved by the cadre authority containing specific charges and mention of grounds in support of each charge and he shall be required to submit explanation in respect of the charge within a reasonable time which shall not be less than fifteen days", and as per Regulation 29(a)(ii), "an enquiry shall be conducted" and thereafter, as per Regulation 29(a)(iii), "such a cadre employee shall also be given an opportunity to produce and cross-examine the witnesses at his own cost in his defence and of being heard in person if he so desires". Regulation 29(c) says, "the Enquiry Officer shall be appointed by the Cadre Authority provided that the officer at whose instance disciplinary action was initiated shall not be appointed as an Enquiry Officer nor shall the Enquiry Officer be the appellate authority" and Regulation 29(d)((i) also says, "a cadre employee under suspension shall be

entitled to a subsistence allowance as per the payment of Subsistence Allowance Act, 1981".

8. It is the vehement and forceful submission of Mr. M. S. Palanisamy , learned counsel for the appellant that Regulation 29 of the Tamil Nadu Primary Agricultural Co-operative Bank Common Cadre Service Regulations 2000, which was framed as per G.O.Ms. No. 55, Co-operation, Food and Consumer Protection Department, dated 24.03.2000, has been given a complete go-by, for the reason that the charge memo was issued only by the Special Officer, viz., the third respondent and Enquiry Officer was also appointed by him and thereafter, the appellant was placed under suspension and during the period of suspension, subsistence allowance was not paid to him and since the mandatory clause contemplated in the above said Government Order has not been followed, the entire disciplinary proceedings are vitiated and the appellant is entitled to put back in service for want of jurisdiction.

9. The learned counsel appearing for the appellant, in support of the said submission, has placed reliance on the following orders:-

- i. The judgment, dated 08.09.2010, made in W.A. No. 63 of 2009;
- ii. The judgment, dated 13.12.2006, made in W.A. No. 1284 of 2006; and
- iii. The judgment, dated 08.02.2013, made in W.A. No. 666 of 2011.

10. Per contra, Mr. L.P. Shanmugasundaram, learned Special Government Pleader, appearing for respondents 1 and 2, submitted that since the appellant has failed to raise the ground with regard to competency of the third respondent at the earliest point of time, it is not open to him to raise the said ground at this juncture and further submitted that the learned Judge has taken into consideration all the legal aspects and rightly dismissed the writ petition.

11. Mr. C.K. Chandrasekar, learned counsel appearing for the Special Officer/third respondent, would submit that as per G.O.Ms. No. 122, Co-operation, Food and Consumer Protection Department, dated 04.07.2008, the Board of the concerned Society is competent to initiate disciplinary proceedings and the Special Officers, who are in charge of the concerned Banks, are competent to take disciplinary action and even for the sake of arguments, it is assumed that this Court is going to allow the writ appeal and remand the matter once again, the Special Officer has to issue charge memo and therefore it is only an empty formality and hence, prays for confirmation of the order passed in the writ petition and dismissal of this writ appeal.

12. This Court has carefully considered the rival submissions and also perused the materials placed before it. A Division Bench of this Court, in the judgment, dated 13.12.2006, made in W.A. No. 1284 of 2006, has considered the scope of G.O.Ms. No. 55, dated 24.03.2000, issued by the Co-operation, Food and Consumer Protection Department and also Section 75 of the Tamil Nadu Co-operative Societies Act, 1987, which deals with the constitution of Common

Cadre Service and held as follows:-

14. From G.O.Ms. No. 205, dated 25.5.01, it appears that the State Government refused to extend the term of the members of the Boards of Primary Agricultural Co-operative Societies and authorised the Registrar of the Co-operative Societies/ Regional Joint Registrars of the Co-operative Societies to appoint Special Officers in all those societies. Pursuant to the said G.O.Ms. No. 205, dated 25.05.01, the Special Officer was appointed to perform the duty of the Board of the bank. However, he has not been invested with the power and duty of Cadre Authority, either under sub-section (3) of Section 75 or under Regulation 3. Even if the G.O.Ms. No. 55, dated 24.3.00 is stayed by this Court, any action already taken on the basis of such Government Order cannot be treated to have been stayed. If the Secretaries of the Bank were deemed to have been absorbed in the common cadre on 24.3.00, the effect of the order of stay of G.O.Ms. No. 55, dated 24.3.00 will be applicable to such absorption. Only effect will be that no further order could have been passed thereafter, as per Regulation, 2000 circulated by the said G.O.Ms. No. 55, dated 24.3.00. Similarly, the order of stay passed by the Court will not amount to investing the special officer with the power of the cadre authority till such power is vested u/s 75(3) of the Act. This apart, as per sub-section (3) of Section 75, only an officer in the rank of Joint Registrar or above can be empowered by the State to function as cadre authority of bank in the absence of a committee and no officer below such rank, including the special officer can exercise the power of the cadre authority. Thus, even if G.O.Ms. No. 55, dated 24.3.00 was stayed by this Court in one or other case, the Special Officer was not empowered to act as a Cadre Authority. The impugned order dated 30.08.03 has also been issued by the appellant - Special Officer after the order of stay stood vacated on dismissal of the writ petitions (dismissed on 23.6.03). So he cannot take any advantage of stay order passed by this Court.

13. A perusal of the above cited judgment would disclose that originally G.O.Ms. No. 55, dated 24.03.2000, was put to challenge and an order of stay was granted by this Court and subsequently, stay was vacated on 23.06.2003 and the charge memo in that case was issued on 30.08.2003. It was also held in the said judgment that the said charge memo was issued without jurisdiction and the Division Bench has, ultimately, dismissed the writ appeal, with a liberty to the Cadre Authority/competent authority to proceed further and pass appropriate orders in accordance with law.

14. In yet another order, dated 08.09.2010, made in W.A. No. 63 of 2009, following another order, dated 22.02.2007, made in W.A. No. 1020 of 2006, the writ appeal was dismissed holding that the Special Officer was not the competent authority to inflict the dismissal order without approval from the Common Cadre Authority in terms of G.O.Ms. No. 55, dated 24.03.2000.

15. A Division Bench of this Court, in the judgment, dated 08.02.2013, made in W.A. No. 666 of 2011, has elaborately considered the earlier position rendered by this Court and following the earlier unreported judgment, referred to above, viz.,

W.A. No. 1020 of 2006, dated 22.02.2007, held as follows:-

8. Therefore considering the said ratio laid down by this Court, we have no hesitation in holding that the writ appeal will have to succeed as the second respondent did not have power to initiate and conclude the disciplinary proceedings against the appellant. Furthermore, the learned Special Government Pleader, on instruction, submitted that the appellant has not filed any writ petition challenging the Government Order dated 24.03.2000 earlier. It is further to be noted that the appellant has been facing the proceedings in one form or other from the year 2001 onwards. Perhaps taking into consideration the nature of allegation, even, the first respondent has reduced the punishment imposed. It is also not in dispute that the appellant has retired in the year 2011. Therefore, we are of the view that no useful purpose that would be served by giving any liberty to the first respondent to proceed afresh at this point of time. However, inasmuch as the appellant has not worked for quite some time, he cannot seek payment for the said period. As the impugned order passed by the second respondent is set aside, the appellant is entitled to all the retirement benefits and continuity of service by including the period starting from the date of suspension till the date of superannuation in the cadre of Secretary. The respondents shall take all possible steps to make all the payments due to the appellant in pursuant to the superannuation within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the writ appeal is allowed. No costs.

16. This Court, after referring to the above cited judgment, finds considerable force in the submission made by the learned counsel appearing for the appellant. A perusal of the materials placed before the Court would disclose that admittedly, the third respondent did not obtain the approval from the Common Cadre Authority in terms of G.O.Ms. No. 55, dated 24.03.2000 and only at the time of issuance of second show cause notice, got approval of the Common Cadre Authority and show cause notice was issued and in response to the same, the appellant has submitted his explanation. It is also to be pointed out at this juncture that after vacating the order of interim stay in the writ petition challenging the legality of G.O.Ms. No. 55, dated 24.03.2000, issued by the Co-operation, Food and Consumer Protection Department, the third respondent issued the charge memo on 30.04.2004 and at that point of time, he was not competent to issue such a charge memo and appoint the Enquiry Officer. Though ultimately the order of punishment was issued on 23.05.2007, by the Common Cadre Authority, in the considered opinion of the Court, since the initiation on the part of the third respondent lacks jurisdiction, as pointed out above, the proceedings initiated thereafter, cannot stand, as it lacks jurisdiction.

17. No doubt, the order of dismissal dated 23.05.2007, was confirmed by the Common Cadre Authority, as already pointed out above, even at the time of issuance of charge memo, on 30.04.2004, as well as appointing enquiry officer on 14.01.2004, the third respondent lacks jurisdiction and in the light of the

above, this Court is of the view that the appellant is entitled to the relief sought for by him. At this juncture, a feeble attempt was made by the learned counsel for the appellant by inviting the attention of this Court to the judgment reported in P. Thangavel Vs. The Chairman, Common Cadre Committee/Joint Registrar of Cooperative Societies , by submitting that though the third respondent lacks jurisdiction, he was aware of G.O.Ms. No. 55, dated 24.03.2000, and since he has not referred the matter to the Common Cadre Authority, the fresh initiation of disciplinary proceedings is bad.

18. This Court finds the said submission made by the learned counsel appearing for the appellant, lacks merit, for the following reasons:-

19. The appellant is now aged about 48 years old and this Court is quashing the order of punishment only on the technical ground of lack of jurisdiction on the part of the third respondent in not following G.O.Ms. No. 55, dated 24.03.2000. As pointed out by the learned counsel appearing for the third respondent, in terms of G.O.Ms. No. 122, dated 04.07.2008, the Board is vested with the jurisdiction of initiation of disciplinary proceedings and now, the Board has been superseded and the Special Officer has been put in charge of the Society and therefore, at present, he is competent to initiate disciplinary proceedings and appoint the Enquiry Officer. The learned Judge has not properly taken into consideration the scope and relief of G.O.Ms. No. 55, dated 24.03.2000, while dismissing the writ petition and in the light of the above cited judgments of various Division Benches of this Court, referred to above, coupled with the factual aspects, this Court is of the opinion that the appellant is entitled for reinstatement.

20. In the result, the writ appeal is allowed and the impugned order, dated 11.11.2011, made in W.P. No. 13346 of 2010, is set aside and the appellant is to be reinstated in service. In terms of G.O.Ms. No. 122, dated 04.05.2004, issued by the Co-operation, Food and Consumer Protection Department, the third respondent is granted liberty to proceed afresh from the stage of issuance of charge memo. Since a specific stand has been taken by the appellant in his writ petition that he is not paid with subsistence allowance, if it is not paid by the third respondent Society, they have to pay the subsistence allowance in the event of their initiating fresh proceedings in accordance with law.

21. It is the submission of the learned counsel for the third respondent that after the report submitted u/s 81 of the Co-operative Societies Act, 1973, the appellant is facing sur-charge proceedings, and criminal prosecution has also been launched. In view of the above, this Court finds it fit and proper to grant liberty to the third respondent to initiate disciplinary proceedings afresh in terms of G.O.Ms. No. 55, dated 24.03.2000. However, it is open to the appellant to raise all the defence open to him in the disciplinary proceedings to be initiated by the third respondent afresh. The question of backwages till the date of order of dismissal, dated 23.05.2007, will be subject to the outcome of the fresh disciplinary proceedings to be initiated by the third respondent and the orders

passed thereon.