

(2013) 08 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No's. 14837 and 23241 of 2013 and M.P. No. 1 of 2013
in Writ Petition No's. 14837 of 2013 and M.P. No's. 1 and 2 of 2013
in Writ Petition No. 23241 of 2013

M. Rajamanickam

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 87

Citation : (2013) 7 MLJ 891

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : K. Premkumar, for the Appellant; V. Jayaprakash Narayanan, Spl.G.P,
for the Respondent

Final Decision : Dismissed

Judgement

D. Hariparanthaman, J.—The petitioner was appointed as Special Officer of the Karupparayasami Power Looms Weavers Cooperative

Society. He served in the Society as Special Officer from 5.1.2009 to 5.2.2011. Thereafter, he was transferred from the post of Special Officer to

a Handlooms Officer in the Handlooms and Textiles Department. He reached the age of superannuation on 31.5.2013. He was issued with charge

memo dated 22.8.2012. He was also issued with another charge memo dated 23.5.2013. The petitioner has filed the Writ Petition No. 14837 of

2013 to quash the aforesaid charge memos.

2. On the eve of his retirement, two orders dated 30.5.2013 were passed. One is the order placing him under suspension under Rule 17(e)(1) of

the Tamil Nadu Civil Services (Discipline and Appeal) Rules and another is the order retaining him in service by invoking Rule 56(1)(c) of the

Fundamental Rules.

3. The petitioner filed the second Writ Petition No. 23241 of 2013 to quash the suspension order and retention order dated 30.5.2013.

4. Heard both sides.

5. The learned counsel for the petitioner has vehemently contended that since the petitioner served in the Cooperative Society, the Assistant

Director of Handlooms and Textiles, Tirupur has no jurisdiction to issue the impugned charge memos. According to him, when the petitioner was

employed in the Cooperative Society, the Department could have no jurisdiction to proceed against the petitioner.

6. Secondly, it is submitted that the issuance of charge memo at the verge of retirement is bad and illegal.

7. Thirdly, it is submitted that surcharge proceedings were initiated u/s 87 of the Tamil Nadu Cooperative Societies Act for the alleged loss caused

to the Department due to his negligence and therefore, simultaneous disciplinary proceedings cannot be continued.

8. On the other hand, the learned Special Government Pleader has submitted that even if the petitioner was appointed as a Special Officer, the

petitioner was under the control of the Department and the Department can very well issue the charge sheet and take disciplinary action.

9. The learned counsel has further submitted that initially charge memo was issued on 22.8.2012 and Annexures 3 and 4 were not furnished along

with the said charge memo and the same is in violation of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The defect

was rectified and the latter charge memo dated 23.5.2013 was issued and therefore the same could not cause any prejudice to the petitioner,

particularly when he was not placed under suspension between 22.8.2012 and 23.5.2013.

10. The learned counsel has also submitted that the departmental action is totally different from the surcharge proceedings. The surcharge

proceeding is taken under the Tamil Nadu Cooperative Societies Act for the loss caused to the Society due to the negligence of the petitioner. The

same cannot preclude the Department from taking disciplinary action for the misconduct committed by the petitioner during his service.

11. The learned Special Government Pleader has also submitted that the

petitioner is also facing criminal prosecution for his action.

12. I have considered the submissions made by the learned counsel on either side.

13. I am not in agreement with the submission made by the learned counsel for the petitioner. Just because the petitioner was posted in the

Cooperative Society as Special Officer, the Department does not lack jurisdiction to take action against its employees. If the said submission is

accepted, neither the Cooperative Society can take action against the Government servant nor the Department can take action against the

Government servant. Hence, this submission is rejected as it has no merit.

14. It is true that the second charge memo dated 23.5.2013 was issued at the verge of his retirement, as he was to retire on 31.5.2013. In fact, it

is not the second charge memo as described by the petitioner. Since the first charge memo was withdrawn, as it was found to be defective, the

fresh charge memo was issued. The first charge memo dated 22.8.2012 is enclosed in the typed set. The said charge memo does not contain

Annexures 3 and 4. Hence, the same is opposed to Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. On noticing the

same, the Department has cancelled the first charge memo and has issued fresh charge memo dated 23.5.2013, which is described as the second

charge memo. In fact, the Department could have supplied Annexures 3 and 4. On the other hand, the Department has issued a fresh charge

memo and the same cannot be faulted and the petitioner cannot say that the Department issued charge memo at the fag end of his career.

15. At this juncture, it is useful to extract F.R.56(1)(c) of the Fundamental Rules as follows:

56. (i) Retirement on superannuation:

....

Notwithstanding anything contained in clause (a), a Government servant who is under suspension

(i) on a charge of misconduct

(ii) again whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the appointing authority to retire on his

reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry

into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceedings taken under rule 17(c) of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as

the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

16. In fact, there is no blanket prohibition for the Department to issue charge memo against its employees at the verge of retirement. In the facts

and circumstances of the case, the Department cannot be faulted for cancelling the first charge memo and issuing a fresh charge memo correcting

the mistake. Otherwise, the first charge memo could be quashed by this court, as it is not in accordance with Rule 17(b) of the Rules.

17. The last submission made by the learned counsel for the petitioner also deserves to be rejected. It is well settled that the Department can

proceed simultaneously against an employee by filing a criminal case for his commission/omission and also take departmental action under the

Service Rules. Likewise, the employee shall also face the other consequences, such as surcharge proceedings under the Tamil Nadu Cooperative

Societies Act. Just because the petitioner is facing surcharge proceedings, the same cannot preclude the Department from taking departmental

action and both are operating in different fields. For all the aforesaid reasons, I do not find any merit in the Writ Petitions. Hence, both the Writ

Petitions stand dismissed. No costs. The connected Miscellaneous Petitions are closed.