

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.06.2010

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.9606 of 2003  
and  
W.P.M.P.No.12195/2003  
&  
W.V.M.P.No.1586/2003

S.Chinnasamy

...Petitioner

Vs.

1.The Joint Registrar of  
Co-Op. Societies,  
Madurai Region,  
Chinnasokkikulam,  
Madurai.

2.The Special Officer,  
M.D.Spl. 121 Pasukaranapatty Primary  
Agriculatural Co-operative Bank Ltd.,  
Puthipuram (Post),  
Usilampatti (TaluK)  
Madurai (District).

...Respondents

Prayer : This writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records of the 1<sup>st</sup> respondent made in Revision Petition No.15/2002 SP dated 26.02.2003 and quash the same and forbear the 2<sup>nd</sup> respondent from proceeding with the enquiry based on the charge memo dated 16.05.1996 made in Na.Ka.No.Nil received on 10.04.2002.

For Petitioner : Mr.S.Kalimuthu for S.Silambanan Associates

For Respondents : Mr.V.Srikanth A.G.P.(W) for R-1  
Mr.N.G.Kalaiselvi for R2

ORDER

By consent, the main writ petition itself is taken up for disposal.

2. The prayer in the writ petition is for issuance of writ of Certiorarified Mandamus to quash the order passed by the first

respondent in revision petition No.15/2002 dated 26.02.2003 and forbear the second respondent from the proceedings with the enquiry on the charge memo dated 16.05.1996, received with the petitioner on 10.04.2002.

3. The facts, which are necessary for the disposal of the present writ petition are that the petitioner joined service of the second respondent society as its Secretary on 29.10.1986. The petitioner was placed under suspension on 06.02.1995 and he was kept under suspension without payment of subsistence allowance. Since, he was kept under suspension for a prolonged period of five years, the petitioner filed the revision petition before the first respondent on 05.11.2001, challenging the order of suspension, since no orders were passed on the revision petition, the petitioner filed a writ petition before this Court in W.P.No.11312/2002 and this Court by order dated 30.04.2002, directed the first respondent to dispose of the revision petition and till then granted the stay of order of suspension. After the direction was issued, the second respondent by order dated 28.03.2002, stating that the enquiry, which was postponed for administrative reasons in June 1986 would be again commenced from 06.04.2002. The petitioner submitted a reply on 04.04.2002, stating that he has received any charge memo and thereafter the charge memo dated 16.05.1996, counter signed by the Special Officer on 10.04.2002, containing 13 Articles of charges were issued to the petitioner. Thereafter, the petitioner received enquiry notice dated 10.04.2002 and the petitioner also submitted his objections on 18.04.2002 and 23.04.2002. Subsequently, the first respondent by order dated 10.08.2002 in R.P.No.9/2002, set aside the order of suspension and thereafter the petitioner was permitted to join duty on 23.08.2002. Subsequently, the second respondent by order dated 04.09.2002 directed that the enquiry on the charge memo would be commenced. Therefore, the petitioner filed the writ petition in W.P.No.39791/2002, to quash the charge memo dated 16.04.2002. The contentions raised by the petitioner were rejected by this Court by order dated 25.09.2002 as against which, the petitioner has filed the Writ Appeal No.3329/2002 and the Hon'ble Division Bench of this Court by order dated 15.11.2002, directed that the disciplinary enquiry shall be kept in abeyance to enable the petitioner to seek remedy before the first respondent under Section 153 of the Co-operative Societies Act.

4. It was further observed that subject to such orders that may be passed in the revision petition, the disciplinary proceedings has to be treated in consonance with the said order and the petitioner was entitled to raise all the grounds. As per the liberty granted, the petitioner filed revision petition before the first respondent on 09.12.2002 and the first respondent by order dated 26.02.2003 rejected the revision petition and aggrieved by such order, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner would vehemently contend that the impugned order is erroneous and the first respondent ought to have quashed the charge memo, since the allegations in the charge memo pertained to 1992-93 and the charge memo was issued 1996. Further, it is contended that the reasons assigned by the first respondent is not tenable and in the impugned order calls for interference.

6. Heard the learned Additional Government Pleader for the respondents.

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

8. The scope of interference of a charge memo by this Court exercising discretion under Article 226 of Constitution of India is no longer res-integra. The Hon'ble Supreme Court in Union of India and another Vs. Kunisetty Satyanarayana (2006) 12 SCC 28, while considering the issues held as follows:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh<sup>1</sup>, Special Director v. Mohd. Ghulam Ghouse<sup>2</sup>, Ulagaappa v. Divisional Commr., Mysore<sup>3</sup>, State of U.P. v. Brahm Datt Sharma<sup>4</sup>, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.



16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

9. In the instant case, when the petitioner approached this Court earlier by filing W.P.No.39791/2002, this Court refused to interfere with the charge memo dated 10.04.2002. The petitioner challenged the said order by filing W.A.No.3329/2002 and the Hon'ble Division Bench of this Court by order dated 15.11.2002 permitted the petitioner to invoke the jurisdiction under Section 153 of the Co-operative Societies Act and stated that the disciplinary proceedings shall abide by the order passed by the first respondent on revision. In the revision petition filed, the first respondent by a reasoned order dated 26.02.2003 has come to a conclusion that the charge memo does not call for interference. The first respondent has stated about the surcharge proceedings initiated against the petitioner, which involves substantial amounts of money by order dated 27.08.2001. After appreciating the factual contention, the first respondent came to a conclusion that unless an enquiry conducted on the charge memo, the truth cannot be established and accordingly rejected the revision petition. Now, the petitioner cannot once over raise the very same contentions, which were raised in the earlier round of litigation and rejected. No doubt liberty was granted to file a revision petition and it was made clear by the Hon'ble Division Bench that the disciplinary proceedings had to be treated to be in consonance with the order to be passed on revision. Therefore, once over again, the petitioner cannot seek for quashing the charge memo and from the facts of the case and also considering the nature of charges against the petitioner. I find that this is not one of the rare and exceptional cases, where this Court should exercise with jurisdiction to quash the charge memo.

10. Accordingly, the writ petition fails and its dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

pbn

Sd/-  
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1.The Joint Registrar of  
Co-Op. Societies,  
Madurai Region,  
Chinnasokkikulam,  
Madurai.

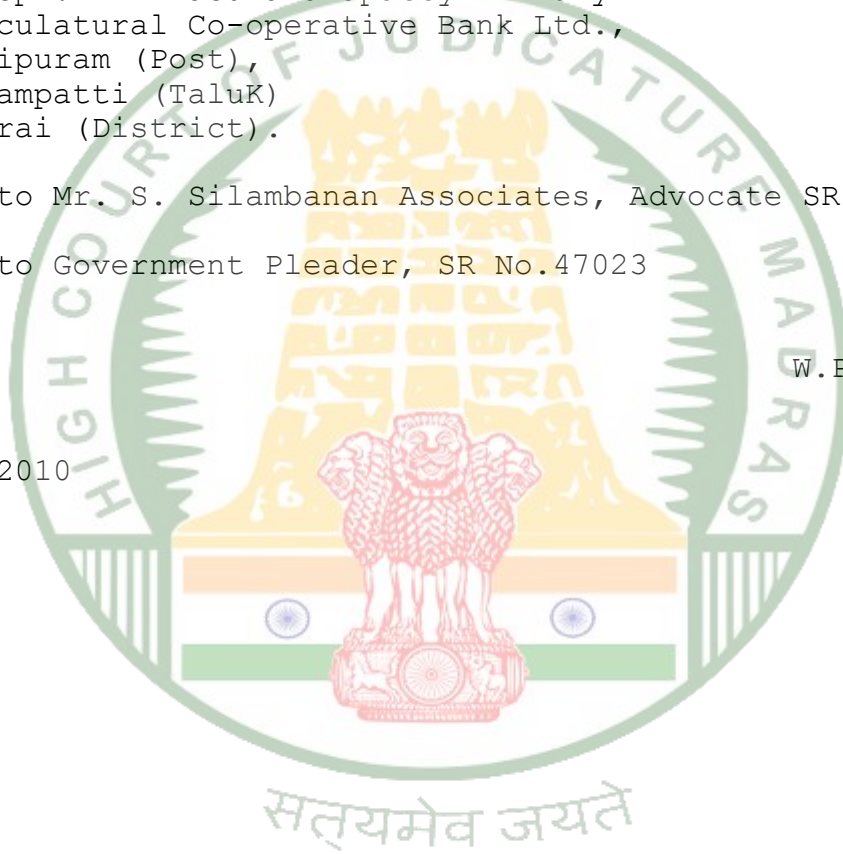
2.The Special Officer,  
M.D.Spl. 121 Pasukaranapatty Primary  
Agriculatural Co-operative Bank Ltd.,  
Puthipuram (Post),  
Usilampatti (Taluk)  
Madurai (District).

+ 1 cc to Mr. S. Silambanan Associates, Advocate SR No.46771

+ 1 cc to Government Pleader, SR No.47023

Order in  
W.P.No.9606 of 2003

SGL(CO)  
SR/7.7.2010



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