

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.11683 of 2011
& M.P.Nos.1 & 2 of 2011

P.Raman

...Petitioner

Versus

- 1.The Joint Register of Co-op. Societies
Cadre Authority in respect of
Primary Agricultural Co-operative Bank Limited
Nagapattinam, Nagapattinam District.
2. The Special Officer,
Vanduvancherry Primary Agricultural
Co-operative Bank Limited,
Vanduvanchery,
Nagapattinam Taluk and District.

... Respondents

Prayers: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his order dated 16.10.2009 relating to suspension, order dated 19.10.2009 relating to charge memo and order dated 07.04.2011 relating to dismissal from service and quash the same and consequently direct the respondents to settle the retirement benefits and other dues to the petitioner with interest at the rate of 24% per annum from 01.06.2010 till the date of realization.

For Petitioner : Mrs.K.Raja

For RR1 : Mr.V.Selvaraj,
Additional Government Pleader

For RR2 : Mr.V.R.Thangavelu

O R D E R

The learned counsel appearing for the petitioner has submitted that the petitioner has filed this Writ Petition, challenging the punishment passed in the impugned order, dismissing the petitioner from service by the second respondent.

2. According to the petitioner, the aforesaid punishment is passed by the second respondent, pursuant to which the petitioner retired from service. The Petitioner relied on the Full Bench decision of this Court reported in CDJ 2015 MHC 4258 and in para 31, it is observed as follows:

"As contemplated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the term 'surcharge' is not penal in nature, hence if there is admission with regard to the loss caused by the employee or the same is established by the co-operative institution, based on the proceeding already initiated for surcharge, the same could be recovered in the manner known to law. However, the provision relating to surcharge under Section 87 of the Act is not impliedly empowering the disciplinary authority to continue any disciplinary proceeding against an employee, who retired from service, in the absence of any Service Rules or Bye-law. Hence, Section 87 of the said Act cannot be construed as an enabling provision or impliedly empowering provision to the employer to continue any disciplinary proceeding after the retirement of any employee, in the absence of any Service Rules."

The above decision of the Full Bench decision of this Court, squarely applies to this case also.

3. The learned counsel appearing for the 2nd respondent would raise the maintainability of the Writ Petition before this Court, challenging against the order passed by the 2nd respondent. In support of his contentions, the learned counsel relied upon a decision of this Court in the case of K.Marappan vs. the Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal 636 001 and another, reported in 2006 (4) CTC 689 (Larger Bench).

4. In view of the above said Larger Bench decision of this Court in the Marappan case, the Writ Petition is not maintainable before this Court. The Court will not have power to exercise under Article 226 of the Constitution of India, when the Act provides for alternative remedies.

5. In view of the said judgment of the Larger Bench decision of this Court, there is alternative remedy under Section 153 of the Tamil Nadu Co-operative Act to file revision before the first respondent. Therefore, the Writ Petition filed by the petitioner is not maintainable. Accordingly, the Writ Petition is dismissed. However, liberty is granted to the petitioner to file Revision before the first respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said Revision, the first respondent

shall consider and pass appropriate orders as expeditiously as possible. No Costs. Consequently, the connected Miscellaneous Petition is closed.

sd/
Assistant Registrar(CS V)

/true copy/

Sub Assistant Registrar

pvs

To

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+1cc to M/s.V.R.Thangavelu, Advocate SR.No.9841

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RSK(CO)
GN(03/03/2017)

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