

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.6068 of 2010 and
M.P.No.1 of 2011

C.Vasanthan

... Petitioner

Vs.

- 1.The Addl. Registrar (MDP),
Office of the Registrar Co-operative Societies,
Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies/Chairman,
Common Cadre Service,
Villupuram.
- 3.The Special Officer,
I.I679, Seerapanthal Primary Agricultural
Co-operative Bank Ltd., Seerapanthal Post,
Seerapanthal Taluk, Villupuram District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the orders in 1.Proceedings Na.Ka.1/2008 Pa dated 31.01.2008 of the 3rd respondent herein relieving petitioner from service as Secretary of the 3rd respondent Society on 31.01.2008 A.N. On retirement without prejudice to the pending disciplinary proceedings 2.Proceedings Na.Ka.14368/2004/Ve.Se/ Sa. Dated 30.05.2009 of the 2nd respondent imposing the penalty of removal from service and 3.Proceedings Na.Ka.65784/09/Sa.Pa. 1 dated 11.02.2010 by the 1st respondent quash the orders in its entirety and issue consequential directions to the respondents that the petitioner shall be deemed to have retired from service without any condition on 31.01.2008 A.N. And to disburse all retirement benefits such as E.P (Own Contribution and Society Contribution), Surrender Leave Salary etc., with interest thereon at 18% per annum for delayed payment.

For Petitioner : Mr.K.Govindaraj

For RR 1 and 2 : Mrs.T.Girija
Government Advocate

For RR 3 : Mr.L.P.Shanmugasundaram
<https://hcservices.ecourts.gov.in/hcservices/> Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking the following relief:

to issue a Writ of Certiorari and Mandamus to call for the records relating to the orders in 1.Proceedings Na.Ka.1/2008 Pa dated 31.01.2008 of the 3rd respondent herein relieving petitioner from service as Secretary of the 3rd respondent Society on 31.01.2008 A.N. on retirement without prejudice to the pending disciplinary proceedings 2.Proceedings Na.Ka.14368/ 2004/Ve.Se/Sa. dated 30.05.2009 of the 2nd respondent imposing the penalty of removal from service and 3.Proceedings Na.Ka.65784/09/Sa.Pa. 1 dated 11.02.2010 by the 1st respondent quash the orders in its entirety and issue consequential directions to the respondents that the petitioner shall be deemed to have retired from service without any condition on 31.01.2008 A.N. and to disburse all retirement benefits such as E.P (Own Contribution and Society Contribution), Surrender Leave Salary etc., with interest thereon at 18% per annum for delayed payment.

2.The case of the petitioner is that he joined the service of the 3rd respondent Bank as Salesman on 01.04.1977 and was promoted as Assistant on 14.05.1981 and thereafter, was promoted as Secretary on 09.02.1991. The petitioner was issued a charge memo dated 24.01.2005 with regard to certain irregularities, while he was functioning as a Secretary of the Bank. During the pendency of the disciplinary action, the petitioner, on attaining the age of superannuation, relieved from service on 31.01.2008, without prejudice to the pending disciplinary action initiated against him.

3.The disciplinary proceeding ultimately resulted in order being passed against the petitioner dismissing him from service vide Proceedings dated 30.05.2009 of the 2nd respondent. In regard to the same irregularities, a criminal case was also filed, but however, the same ended in acquittal. According to the petitioner, without considering the acquittal in the criminal case, the dismissal order was passed.

4.The petitioner filed a Revision Petition against the order of dismissal under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the 1st respondent and the 1st respondent, by his Proceedings, dated 11.02.2010, rejected the Revision Petition. The order of dismissal and the order of rejection by the respondents 1 and 2 are put to challenge in this writ petition. The petitioner has also challenged the order passed by the 3rd respondent on 31.01.2008 while permitting the petitioner to retire from service without prejudice to the pending disciplinary action against him.

5.The learned counsel appearing for the petitioner at the outset would contend that the dismissal order passed by the 2nd respondent cannot be sustained in law for the reason that after retirement of the Employee under the Co-operative Societies Act, disciplinary action cannot be proceeded with, since there was no provision in the Act for continuing the disciplinary action after retirement of the Employee under the provisions of the Tamil Nadu Co-operative Societies Act, 1983.

6.According to the learned counsel for the petitioner, the said issue is directly covered by the decision of the Hon'ble Division Bench of this Court reported in 2012 (3) CTC 488 in the matter of P.Thangavel V. The Chairman, Common Cadre Committee /Joint Registrar of Cooperative Societies, Namakkal Region, Namakkal and another. The Division Bench of this Court has clearly held that 'The Tamil Nadu Co-operative Societies Act, 1983 does not provide any Rule or Provision to continue the Disciplinary proceedings after retirement of delinquent employee'. The Hon'ble Division Bench of this Court has considered several decisions on this aspect and finally concluded that the disciplinary action cannot be continued after retirement of the employee. The relevant paragraphs in the aforesaid decision are extracted below:

"7.As far as the first question is concerned, admittedly, there is no Rule empowering the Special Officer to continue the proceedings against the Secretary, after the Secretary was allowed to retire though reserving rights to proceed with the enquiry. Mr.Jothimanian, learned Counsel for the Society, submitted that the power of the society to proceed with the Disciplinary proceedings was considered by the Division Bench of this Court in the Judgment reported in Registrar of Cooperative Societies, Kilpauk and another v. G.Manoharan, 2010 (2) CTC 234, and the Division Bench had observed that in case of serious misconduct, proceedings could be initiated. That Judgment was rendered following the Judgment of the Supreme Court U.P. State Sugar Corporation Ltd. v. Kamal Swaroop Tandon, 2008 (2) SC 41.

14.On both the grounds, the Appellant has to succeed. Accordingly, the Writ Appeal is allowed. Consequently, the Writ Petition is also allowed and the Charge Memo dated 9.9.2008 and the consequential order appointing Enquiry Officer dated 23.12.2008 are set aside."

7.In the light of the above decision passed by this court, the learned counsel for the petitioner would submit

that the impugned orders are liable to be interfered with as being illegal and contrary to law laid down by the Division Bench of this Court.

8.Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that the disciplinary action had been taken for acts of misconduct committed during the course of the employment, finally an order of dismissal was passed in 2009, before which date the petitioner, having attained the age of superannuation, was permitted to retire.

9.The learned counsel for the respondents 1 and 2 would also cite the Full Bench decision of this Court reported in 2015 (4) CTC 1 in the case of S.Andiyannan V. The Joint Registrar, Cooperative Societies, Madurai. In fact, the said decision supports the case of the petitioner stating that 'Disciplinary proceedings against retired Employee cannot be continued in absence of Rule enabling Authority to proceed with Disciplinary proceedings even after retirement of Employee'. The Full Bench has merely said that surcharge proceedings can be initiated against employee and not disciplinary action.

10.This Court is in complete agreement with the arguments advanced by the learned counsel appearing for the petitioner that the issue which falls for consideration is squarely covered by the decision of the Division Bench of this Court and also by the law laid down by the Full Bench of this Court as afore cited.

11.Therefore, this Court has no hesitation in allowing the Writ Petition and the impugned orders viz., 1.Proceedings Na.Ka.1/2008 Pa dated 31.01.2008 of the 3rd respondent; 2.Proceedings Na.Ka.14368/2004/Ve.Se/Sa. dated 30.05.2009 of the 2nd respondent; and 3.Proceedings Na.Ka.65784/09/Sa.Pa. 1 dated 11.02.2010 of the 1st respondent, are all set aside by this Court.

12.There shall be a consequential direction to the respondents to disburse all retirement benefits as admissible to the petitioner. The said direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

13.With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sgl
To

- 1.The Addl. Registrar (MDP),
Office of the Registrar Co-operative Societies,
Chennai - 600 010.
- 2.The Joint Registrar of Co-operative Societies/Chairman,
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- 3.The Special Officer,
I.I679, Seerapanthal Primary Agricultural
Co-operative Bank Ltd., Seerapanthal Post,
Seerapanthal Taluk, Villupuram District.

+1cc to Mr.K.Govindaraj, Advocate SR.No.85569
+1cc to Government Pleader SR.No.85443
+1cc to Mr.L.P.Shanmughasundaram, Advocate SR.No.85634

W.P.No.6068 of 2010

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