

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.31628 of 2013

and

M.P.No.1 of 2013

N.Elangovan

.. Petitioner

Vs.

1.The Joint Registrar of Co-operative societies,
Vellore Zone,
Vellore.

2.The Management,
Tirupathur Co-operative Primary
Agricultural and Rural Development Bank Limited,
601, J.M.S.Nagar,
Tirupathur-635 601.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the concerned records from the first respondent, quash the order of the first respondent dated 03.09.2013 in Na.Ka.No.8812/2012 A2(Review Petition No.28 of 2012) and consequently direct the respondents to settle all the terminal benefits of the petitioner alongwith all benefits and also alongwith 18% interest per annum on the amount due from 31.07.2012 being the date of superannuation till the actual payment.

For Petitioner .. Mr.Balan Haridas

For Respondents.. Mr.L.P.Shanmugasundaram,
Spl. Govt. Pleader for R1
Ms.T.Girija, Government Advocate for R2

ORDER

The petitioner has approached this Court seeking for the following relief;

'To issue a writ of certiorarified mandamus to call for the concerned records from the first respondent, quash the order of the first respondent dated 03.09.2013 in Na.Ka.No.8812/2012 A2 (Review Petition No.28 of 2012) and consequently direct the respondents to settle all the terminal benefits of the petitioner alongwith all benefits and also alongwith 18% interest per annum on the amount due from 31.07.2012 being the date of superannuation till the actual payment.

2. The case of the petitioner is as follows:

The petitioner joined the services of the second respondent as Supervisor on 07.08.1972. He was promoted as Secretary of the second respondent Society on 12.11.2004. While he was working as Secretary, he was issued with a charge memo dated 26.08.2006. Thereafter, another charge memo dated 12.12.2008 was also issued on an identical set of allegations. Therefore, he challenged the charge memo dated 12.12.2008, by filing a revision petition before the first respondent. The revision petition was rejected by an order dated 31.12.2008 on the ground that the charge memo can be challenged after final orders are passed. He, therefore, filed a writ petition in W.P.No.11318 of 2007, challenging the order dated 31.12.2008 passed by the first respondent. This Court, by order dated 04.08.2009, directed the first respondent to decide the revision petition on its merits. Thereafter, the first respondent passed an order dated 25.01.2010, holding that the original charge memo dated 26.08.2006 and the second charge memo dated 12.12.2008 are one and the same and directed deletion of second charge memo dated 12.12.2008 and to give a fresh charge memo to the petitioner. Thereafter, the first respondent issued a fresh charge memo on 28.11.2011.

3. While so, the petitioner apart from the charge memo dated 28.11.2011 was earlier issued with three other charge memoranda dated 09.03.2010, 07.12.2006 and 30.04.2010. In response to the charge memos, an enquiry was initiated and the disciplinary action was pending. In the meanwhile, the petitioner had attained the age of superannuation on 31.07.2012. On attaining the age of superannuation, the second respondent issued proceedings dated 31.07.2012, allowing the petitioner to retire from service without prejudice to the disciplinary action pending against him in respect of four charge memos as aforesaid. Since, the order passed by the second respondent dated 31.07.2012, permitting the petitioner to retire from

service without prejudice to the pending disciplinary action was without the authority of law, the petitioner was constrained to approach this Court in W.P.No.23306 of 2012, challenging the order of the second respondent dated 31.07.2012. However, the writ petition was dismissed vide order dated 29.08.2012 on the ground that the writ petition was not maintainable against the Co-operative Society and the petitioner was given liberty to approach the revisional authority under the Co-Operative Societies Act.

4. In the above circumstances, the petitioner filed Revision Petition No.28 of 2012, challenging the order dated 31.07.2012, only insofar as the same being issued without prejudice to the disciplinary proceedings. The first respondent without appreciating the legal position in a proper perspective has passed an order on 03.09.2013. The order of the first respondent dated 03.09.2013, is a non speaking order which merely stated that as he was allowed to retire on 31.07.2012, without prejudice to the pending disciplinary action and the disciplinary action had attained finality on 27.02.2013 and the second respondent was directed to pass further orders in the matter. The said order passed by the first respondent dated 03.09.2013 is put to challenge in the present writ petition.

5. Mr.Balan Haridas, the learned counsel appearing for the petitioner would submit that the punishments which were imposed on the petitioner were after the date of the petitioner attaining the age of superannuation on 31.07.2012 and therefore, the punishments cannot be countenanced in law, since under the service rules, the respondents cannot proceed with the disciplinary action after retirement of the employee. According to the learned counsel, in respect of charge memo dated 09.03.2010, the second respondent passed an order dated 27.02.2013, imposing the punishment of stoppage of increment with cumulative effect and as regards earlier charge memo dated 28.11.2011, in which, the enquiry officer submitted a report holding charges were not proved and in view of the report, further action was dropped in the said matter. In respect of other charge memo dated 07.12.2006, wherein, the enquiry officer found charges were not proved, however, disciplinary authority notwithstanding the findings of the enquiry officer, imposed a punishment of recovery of a sum of Rs.66,174/- alongwith interest by order dated 27.02.2013. In respect of last charge memo, a punishment of stoppage of increment for one year without cumulative effect was imposed on the same day i.e., on 27.02.2013.

6. The learned counsel would submit that these punishment orders issued by the second respondent suffer from want of jurisdiction since no disciplinary action could be continued beyond the retirement of the petitioner as per the relevant

service Rules. In support of his contention, the learned counsel would rely on the judgment of the Full Bench of this Court reported in 2015 (4) CTC Page 1 (S. Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another). The Full Bench of this Court has held that the disciplinary proceedings against the retired employee cannot be continued in the absence of Rules enabling authority to proceed with the disciplinary proceedings even after the retirement. In view of the judgment of the Full Bench, the learned counsel would contend that the second respondent had no jurisdiction to pass order on 31.07.2012 stating that the petitioner was permitted to retire without prejudice to the pending disciplinary action. Further, the first respondent, by order dated 03.09.2013, confirming the order of the second respondent without appreciating the legal position, suffers from total non application of mind and the order passed by the first respondent is contrary to the law as declared by the Full Bench of this Court. He would therefore, impress upon this Court to set aside the order passed by the first respondent dated 03.09.2013.

7. Upon notice, Mr.L.P.Shanmugasundaram, learned Special Government Pleader entered appearance for the first respondent and Ms.T.Girija, learned Government Advocate entered appearance for the second respondent and filed a detailed counter affidavit and made their submissions. The facts as stated above have not been controverted by the learned counsel appearing for the respondents. The learned counsel would have no quarrel with the legal proposition as laid down by the Full Bench of this Court as stated supra, namely, that the retired employees of the Co-operative Society cannot be proceeded with by the Department after their retirement.

8. In view of the submissions of the learned counsel representing rival parties and also the facts and the legal position as explained above, this Court, is in entire agreement with the submissions made on behalf of the learned counsel for the petitioner that the original order of the second respondent dated 31.07.2012, permitting the petitioner to retire from service 'without prejudice to the pending disciplinary action' cannot be sustained in law. The impugned order dated 03.09.2013 passed by the first respondent in revision petition, over looking the legal position as explained above and confirming the order passed by the second respondent dated 31.07.2012, is per se illegal and contrary to the law declared by the Full Bench of this Court as stated supra. In the said circumstances, this Court has no other option except to accept the case of the petitioner. Therefore, the impugned order dated 03.09.2013 in Na.Ka.No.8812/2012 A2 passed by the first respondent is set aside. There shall be a consequential direction to the respondents to settle all the terminal benefits due, and payable to the petitioner with all

other attendant benefits. Such exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

/TRUE COPY/

Sub Assistant Registrar

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To

1.The Joint Registrar of Co-operative societies,
Vellore Zone,
Vellore.

2.The Management,
Tirupathur Co-operative Primary
Agricultural and Rural Development Bank Limited,
601, J.M.S.Nagar,
Tirupathur-635 601.

+1 C.C. to M/S. Government Pleader SR.NO.70828/17

+1 C.C. to M/S.L.P.Shanmugasundaram, Advocate SR.NO. 70763/17

+1 C.C. to M/S.Balan Haridas Advocate SR.NO. 69972/17

VGI (CO)
T.R (27/10/2017)

सत्यमेव जयते

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