



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. (MD) No.603 of 2014
and
M.P (MD) Nos. 1 of 2014

The Joint Registrar,
Thiruchirappalli District Central
Co-operative Bank Ltd,
No.1, Fort Station Road,
Thiruchirappalli - 620 002. ... Appellant/2nd Respondent

Vs.

1. The Registrar of Co-operative Societies,
E.V.R Salai,
Chennai - 600 010. ...1st Respondent/1st Respondent
2.A.John Durai ...2nd Respondent/Petitioner

PRAYER: This Writ Appeal is filed under Clause 15 of the letter patent, to set aside the order passed by the learned Judge in WP (MD) No.4627/2008, dated 21.12.2012.

Prayer in WP(MD). 4627/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to pass orders issue a writ of certiorarified mandamus calling records from the 2nd respondent relating to the impugned proceedings in No. 3952/2004.05 (N.4) A.10 dt 8.4.2008 and quash the same and direct the respondents to pay all the terminal benefits to the petitioner immediately, award cost.

For Appellant : D.Shanmugaraja Sethupathi

For Respondents : Mr.T.S.Md.Mohideen,
Addl. Govt. Pleader for R1
Mr.R.Murugan
for Mr.Rajaram for R2

**JUDGMENT**

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

This intra Court appeal is directed against the order dated 21.12.2012 allowing WP(MD)No.4627 of 2008 filed by the second respondent herein.

2.The second respondent herein was working as a Manager in the appellant bank. He was issued with a charge memo dated 27.06.2005. He reached the age of superannuation on 31.08.2007. In fact, he was directed to hand over the charge on the said date to one Dayanidhi, Assistant Branch Manager. The second respondent herein was also relieved from duty. But on the next day i.e. On 01.09.2007, he was served with a letter stating that he had been terminated from service on 31.08.2007. The second respondent therefore filed WP(MD)No.10238 of 2007 challenging the order of termination. This Court by order dated 07.12.2007 directed the first respondent herein to decide the issue as an appellate authority. The first respondent by order dated 13.03.2008 set aside the termination order, but permitted the appellant bank to continue the disciplinary proceedings. Thereupon, the appellant issued the notice dated 08.04.2008 calling upon the second respondent herein to show cause as to why a major punishment cannot be imposed on him. This was challenged in WP(MD)No.4627 of 2008. The said writ petition was allowed by order dated 21.12.2012. Challenging the same this intra Court appeal has been filed.

3.Heard the learned counsel for the appellant as well as the second respondent.

4.We went through the materials on record. It is not in dispute that the second respondent herein reached the age of superannuation on 31.08.2007. It is also beyond dispute that he was directed to hand over the charge on the said date by a letter dated 30.08.2007. No order was passed retaining the second respondent in service. He was allowed to retire. In fact, when an employee reaches the age of superannuation, he automatically retires unless an order is passed not permitting him to retire. In this case, no such order was passed. Therefore, the second respondent should be taken to have retired from service. When once the second respondent retired from service, the question of terminating him thereafter does not arise. In any event, the first respondent herein chose to set aside the order of termination. The order setting aside the termination of the second respondent has not been challenged. It has become final. Therefore, the legal consequence is that the second respondent cannot be proceeded against thereafter. That is why the learned Judge held that the show cause notice impugned in the



writ petition is without jurisdiction. The learned Judge also rightly held that the order of the first respondent permitting continuance of the disciplinary proceeding is also non-est in law.

5. Considering these aspects, the learned Judge rightly entertained the challenge even at the stage of show cause notice. Following the settled precedents, the learned Judge allowed the writ petition. The reasons assigned in the order allowing the writ petition are sound. We see no reason to take a different view. It is also admitted that the appellant bank did not suffer any financial loss on account of the acts of the second respondent herein. The second respondent attained the age of superannuation some 10 years ago. Therefore, there is no justification in seeking to re-open stale and settled matters at this point of time.

6. This writ appeal is without any merit. It stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To

1. The Registrar of Co-operative Societies,
E.V.R Salai, Chennai - 600 010.

2. +2 cc TO Mr.D.Shanmugaraja Sethupathi, Advocate in
SR No.78227,78453

3. +1 cc to Mr.S.Arunachalam, Advocate, Sr.No.78453

Skm/Arul

AE/KK/SAR3/13.10.2017/3P/5C

**W.A. (MD) No.603 of 2014
and**

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12.09.2017**