



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2017

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

**W.P(MD) No.12784 of 2017 and
W.M.P. (MD) No.9887 of 2017**

P.Periyasamy

... Petitioner

-vs-

1. The Deputy Registrar of Co-operative Societies,
Madurai Region, Madurai.
2. The Enquiry Officer/Co-operative Sub-Registrar,
A.294, Madurai-cum-Ramnad District Public Servants'
Co-operative Credit Society,
Madurai.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records in pursuant to the impugned order passed by the 1st Respondent in proceeding Na.Ka.No. 4074/2016 Sa.Pa. (1) dated 28.03.2017 and quash the same.

For Petitioner : Mr.M.Saravana Kumar

For Respondents : Mr.D.Muruganandam
Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed by the petitioner, seeking to quash the impugned order passed by the 1st Respondent in Na.Ka.No.4074/2016 Sa.Pa.(1) dated 28.03.2017, in and by which, the petitioner was asked to show cause within 15 days as to why the loss caused by the petitioner to the extent of a sum of Rs.27,77,061/- to the Society should not be recovered from him with 18% interest.

2. The case of the petitioner is that he joined as Clerk in Madurai District Central Co-operative Bank on 19.03.1975 and was allowed to retire as Assistant Accountant on attaining the age of superannuation on 02.09.2012 on the basis of the Resolution dated 22.08.2012. After his retirement, the surcharge proceedings under



Section 87 of Tamil Nadu Co-operative Societies Act, were initiated against the petitioner and other office bearers, for recovery of the loss purported to have been caused by the petitioner.

3. Learned counsel for the petitioner has submitted that the act of the 1st respondent in initiation of surcharge proceedings against the petitioner, who had retired from the service of the Society long back, is totally arbitrary and against the ratio laid down by the Hon'ble Division Bench of this Court. In support of his contention, he has relied upon the judgment of the Hon'ble Division Bench of this Court in the case of **S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another**, reported in **2015 Writ L.R.755**, wherein it has been held as under:

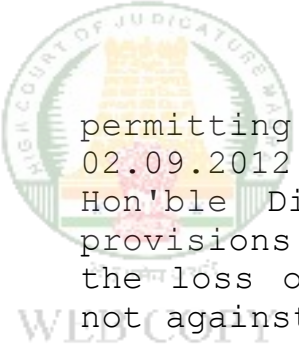
"27.....It is well settled in various decisions of the Hon'ble Supreme Court that if the loss caused by any employee is established, in the manner known to law, the employer/co-operative society can recover the amount, by way of surcharge with or without interest, however, **surcharge proceedings cannot be initiated against any retired employee.**

28. So far as the second legal question is concerned, it is crystal clear that the object of Section 87 of the Act is only to recover the loss caused to any co-operative institution by an employee, if it is established as per procedure known to law. Surcharge need not be penal in nature, if the loss caused by him is admitted by the employee or established by the authority against him that could be recovered by the co-operative society. However, even surcharge proceedings cannot be initiated after the retirement of an employee to recover the same from his retiral benefits.

4. Per contra, learned Additional Government Pleader appearing for the respondents has strenuously contended that the impugned order passed by the 1st respondent does not warrant any interference by this Court, as the petitioner was mainly responsible for the huge loss incurred by the Society. However, he sought time to get instructions from the concerned respondent to put forth his contention.

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. I find much force in the contention raised by the learned counsel for the petitioner, because the petitioner had been discharged from service once and for all and there is no relationship existing between the petitioner and the employer as of now. Moreover, a Resolution came to be passed on 22.08.2012,



permitting the petitioner to retire from service with effect from 02.09.2012. Above all, as per the principles laid down by the Hon'ble Division Bench of this Court, referred to above, the provisions of Section 87 of the Act can be initiated to recover the loss only as against the employee serving in the Society and not against any retired employee.

7. In view of the foregoing discussions, this Court is of the view that the impugned order dated 28.03.2017 is liable to be set aside, as it runs contrary to the ratio set out by the Hon'ble Division Bench of this Court. Accordingly, this petition is allowed and the impugned order dated 28.03.2017 passed by the 1st respondent is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To:

1. The Deputy Registrar of Co-operative Societies,
Madurai Region, Madurai.
2. The Enquiry Officer/Co-operative Sub-Registrar,
A.294, Madurai-cum-Ramnad District Public Servants'
Co-operative Credit Society,
Madurai.

+1 cc to Mr.M.Saravana kumar , Advocate in SR.No. 67224

ar/rm

AE/SKN RSK/SAR4/28.07.2017/3P/4C

W.P(MD) No.12784 of 2017
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