IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.23730 of 2008

U.Anbalagan .. Petitioner

Vs

1. The Joint Registrar of Cooperative Societies,
Thiruvarur Region,
Collectorate,
Thiruvarur.

2. The Deputy Registrar of Cooperative Societies,
Old Nagapattinam Road,
Thiruvarur.

3. The Management,
Kodavasal Cooperative Primary Agriculture
and Rural Development Bank Limited,
Rep by its Special Officer,
Thirukulam South, Kodavasal Po & TK,
Thiruvarur District. .. Respondents

Prayer:-
Writ Petition is filed under Article 226 of the Constitution of India, to call for the records made in the impugned order Na.Ka.No.660/2008.Sa.Pa. Dated 31.07.2008 passed by the first respondent and quash the same and further, direct the respondents to disburse the Provident Fund and Gratuity amounts payable to the petitioner by the third respondent.

For Petitioner : Mr.M.V.Venkataseshan

For R1 and R2 : Mr.L.P.Shanmugha Sundaram
Special Government Pleader(Co-op)

For R3 : Mr.N.Senthilkumar

ORDER

The present writ petition has been filed seeking for Certiorarified Mandamus, challenging the order passed by the first respondent in Na.Ka.No.660/2008.Sa.Pa. Dated 31.07.2008 and directing the respondents to disburse the Provident Fund and Gratuity amounts payable to the petitioner by the third respondent.

2. The facts of the case in the present Writ Petition as stated in the affidavit are as follows.

The petitioner was appointed as Supervisor in the third respondent Cooperative Primary Agriculture Organization on 02.11.1971. In 2002, the petitioner was posted as Secretary-in-charge of the third respondent. The charge memo was issued on 18.09.2007 by the third respondent with the five charges but all relating to one loan transaction, to which, the petitioner had submitted an explanation which was followed by domestic enquiry, the third respondent issued show cause notice dated 12.11.2007 as to why a punishment of reduction in scale of pay from the present scale of Rs.9525/- to Rs.8850/- cannot be imposed. The third respondent issued another charge memo dated 24.11.2007, with regard to certain insurance policy which has expired, to which, the petitioner was held liable for not renewing the same and the petitioner also furnished his reply.

3. In the meantime, on 30.11.2007 the petitioner attained superannuation and therefore, the third respondent had to permit the petitioner to retire from service, without prejudice to the pending enquiry for charges under Section 81 of the Tamil Nadu Cooperative Societies Act. The petitioner further states that as against the order the petitioner preferred a revision under Section 153 of the Tamil Nadu Cooperative Societies Act, 1983 to the first respondent. However, there was no action taken by the first respondent, which made the petitioner to file W.P.No.17758 of 2008 and this Court directed the first respondent to dispose of the revision petition filed by the petitioner within four weeks from the date of receipt of the order.

4. In compliance with the order passed by this Court, the first respondent by order dated 31.07.2008, rejected the revision petition filed by the petitioner, which has been challenged in the present writ petition.

5. The first and second respondents had filed a detailed counter stating that the petitioner has committed serious irregularities against the regulation for the sanction of Non Farm Sector Loans. Pursuant to which, a Criminal case in Crime No.1 of 2009 under Sections 408, 409, 467, 468, 477 A r/w 3A IPC Numbered as C.C.No.126 of 2010, which is pending in the Criminal Court. The disciplinary proceedings were also pending against the petitioner and the disciplinary proceedings were started when the petitioner was in the service and the final

order was passed by the third respondent. It is also contended that the third respondent never declined to give the retirement benefits, the petitioner without having understood this procedure, has filed this Writ Petition. The disciplinary proceedings were still under disposal and further, a criminal case was under trail. Therefore, the petitioner was not entitled to claim his terminal benefits from the management and sought for dismissal of this Writ Petition as not maintainable.

6. Heard the learned counsel for the petitioner and learned counsel for the respondents and perused the available materials on records.

7. The learned counsel Mr.M.V.Venkataseshan appearing for the petitioner would contend that while permitting the petitioner to retire, the respondents have no authority to withheld the retirement benefits, as the petitioner's post has not pensionary funds and further contended that neither the Tamil Nadu Cooperative Societies Act nor the bye-law of the third respondent sustained where there is no provision neither for continuation of departmental proceedings nor deferral of disbursal of retirement benefit after an employee like the petitioner is permitted to retire, and hence, sought to set aside the impugned order.

8. In support of the arguments, the learned counsel for the petitioner relied upon the decision reported in (2015) 6 MLJ 684 to substantiate that withholding the retirement benefits cannot be withheld at the time of retirement and the third respondent is not pensionable establishment, unless, there is a statutory provision for withholding the provident fund or gravity or other retrial benefits. The learned counsel for the petitioner would place reliance on the case of the similar set of facts reported in 2016 Writ L.R.574. Further, the learned counsel for the petitioner has relied upon the Judgment reported in 2014-2-L.W.996, contending that after attaining superannuation, not open to continue disciplinary proceedings in the absence of any rule or bye-law. Similarly, the Writ Petition also place reliance on the full Bench judgment reported in (2015)5MLJ.

9. Per contra, Mr.L.P.Shanmugha Sundaram, the learned Special Government Pleader for the respondents 1 and 2, would argue that the petitioner had committed serious irregularities and has caused loss to the third respondent bank to an amount of Rs.41,65,000/- and the criminal complaints are pending. The learned counsel for the third respondent has also filed additional documents contending that as against the surcharge proceedings, the petitioner had filed revision before the Joint Registrar and the Joint Registrar order, by order dated

31.07.2008, had dismissed the review petition. As against the said order, the petitioner ought to have filed an appropriate appeal before the Principal District Judge under the statute and no Writ Petition can be maintained.

10. It is seen from the records that the impugned order is pertaining to the order passed by the first respondent and the revision filed as against the order dated 30.11.2007, by which, the third respondent, while permitting the petitioner to retire without prejudice to the pending charges and enquiry withholding the terminal benefits of the petitioner. The petitioner challenged the said order on 30.11.2007 before the first respondent, the first respondent, by order dated 31.07.2008 had held that withholding of terminal benefits of the petitioner even after the retirement of petitioner is valid. On perusal of the order by the first respondent, the first respondent has not given any reason as to how such deferral or disbursal of retirement benefit and the absence of any by-law or under statute would be maintained.

11. The learned counsel for the petitioner by relying on the full bench Judgment of the Court which had categorically held that disciplinary proceedings cannot be continued against an employee of the Cooperative Societies in the absence of service rules empowering the disciplinary authority to continue the disciplinary proceedings after the day of superannuation. However, the learned counsel for the respondents by filing the additional typed set of papers to prove this Court attention to the disciplinary proceedings that had taken place for the retirement of the petitioner. The surcharge proceedings initiated against the petitioner, wherein which the petitioner had challenged the surcharge proceedings under Section 153 of the Cooperative Societies Act, before the first respondent and by order dated 30.11.2012, the first respondent had set aside the termination of the petitioner which came to be passed on 15.10.2012 with effect from 30.11.2007, on which, the petitioner was superannuated. The order passed by the first respondent came to be revet under Section 154 of the Tamil Nadu Cooperative Societies Act by the respondent before the Appellate Tribunal and the Appellate Tribunal, by order dated 31.08.2015 had set aside the order passed by the first respondent dated 30.11.2012. However, which seems to be no information from the petitioner's counsel as to further proceedings initiated by the petitioner against the order dated 31.08.2015 confirming the surcharge order passed by the Deputy Registrar and the dismissal of the petitioner from service with effect from 30.11.2007, coming back to the present impugned order which is in the Writ Petition is ordered passed under Section 153 of the Tamil Nadu Cooperative Societies Act 1983. It would be appropriate to refer the order passed by the full bench of the Madurai Bench of this Court,

pertaining to continue the disciplinary proceedings after superannuated.

12. It is cited under the judgment of (2015) 5 MLJ 1 (full bench) Andiyannan and another versus Joint Registrar, Cooperative Societies, Madurai and others.

> "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 retrial benefits.
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> 29. The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a co-operative Society governed by the Tamil Nadu Co-operative Societies Act can be continued even after the retirement of the said employee. The decisions relied on by both the learned counsel have have categorically make it clear that the legal position is that the authority could continue the departmental enquiry against retired employee, only subject to applicable statutory Rules or bye-law, which govern the terms and conditions of his service of the employee. Hence, the relevant Rules governing the service conditions of the employee is the determining factor as to whether and in what manner a domestic enquiry can be continued against an employee, who retired after reaching the age of superannuation. Hence, had there been any enquiry initiated while the delinquent employee was in service, it could be continued even after his retirement, subject to the service Rules or bye-law of the co-operative society. If the service Rules relating to the employee permits for continuation, there would be no bar in continuing the departmental proceeding, that was initiated while he was in service, even after his retirement. It is also categorically held by the Hon'ble Supreme Court in the latest decisions, that in such circumstances, even if the guilt is proved, there is no possibility or imposing punishment of dismissal or removal from service, as the same is not legally sustainable.

30. Answer to the first question referred to this Bench:

Under the Tamil Nadu Co-operative societies Act, 1983, once an employee retired from service, there could be no authority vested with the employer for continuing any disciplinary proceed, in the absence of relevant service Rules permitting the employer to continue the disciplinary proceeding. In other words, if there is no service Rules or bye-law of the society empowering the employer to continue the departmental proceeding, the employer, would have no authority to continue the departmental proceeding after the retirement of the employee.

31. Answer to the second question referred to this Bench:

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.”

13. On careful reading of the above Judgment, it is categorically held that no disciplinary action can be initiated or continued after the retirement of an employee in the absence of any rules or by-law empowering the society to do so. In my view that, unless there is a statutory backing for such deferral of retirement benefits, the Cooperative Societies cannot withhold the same and there is no authority to withhold the retirement benefits of the employee, unless the statute or by-law of the Cooperative Societies empowers the same. On perusal of the impugned order, the first respondent while upholding the order dated 30.11.2007 permitting the petitioner to retire, has not given any reason or relied on any bye-law or statute for confirming the order dated 30.11.2007. Under these circumstances, when there is no statute or by-law empowering the Cooperative Society to withhold or deferral payment, especially,

when the employee is not permissible with the deferral can never be accepted and the petitioner is entitled to other retirement benefits of the superannuation.

14. Accordingly, this Court of the view that the impugned order has to be set aside and entitling the petition to gratuity and other retirement benefits. Therefore, this Writ Petition is allowed and the impugned order is quashed. Further, the fifth respondent herein is directed to settle the gratuity and other retirement benefits with 12% of interest, within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raja/vji

To

1. The Joint Registrar of Cooperative Societies,
   Thiruvarur Region,
   Collectorate,
   Thiruvarur.

2. The Deputy Registrar of Cooperative Societies,
   Old Nagapattinam Road,
   Thiruvarur.

3. The Special Officer,
   Kodavasal Cooperative Primary Agriculture
   and Rural Development Bank Limited,
   Thirukulam South, Kodavasal Po & TK,
   Thiruvarur District.

+2cc to Mr.M.V.Venkataseshan, Advocate, S.R.No.88756
+1cc to the Government Pleader, S.R.No. 89494

+1cc to Mr.N.Senthilkumar, Advocate, S.R.No.47 (02.04.2019)

W.P.No.23730 of 2008

SBJ(CO)
CS/08/03/2019