



For Appellants : Mr.C.Selvaraj
For Respondent : Mr.C.Venkatesh
for M/s.Ajmal Associates

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.C.Selvaraj, learned counsel appearing for the appellants and Mr.C.Venkatesh, learned counsel appearing for the respondent.

2.This appeal is directed against the order passed in W.P. (MD).No.2289 of 2015 dated 04.01.2016.

3.The appellant is the Joint Registrar of the Co-operative Society, Karur District and three others, who were impleaded as respondents 1 to 4 in the writ petition, which was filed by the first appellant herein. The writ petitioner filed two writ petitions, one is challenging the charge memo dated 22.04.2013 on the ground that the third respondent has no jurisdiction to continue the departmental proceedings after retirement and the other writ petition in W.P.(MD).No.20098 of 2015, is to direct the respondents to disburse the gratuity together with all consequential benefits.

4.The first appellant had filed counter affidavit contending that as to how they are justified in continuing the disciplinary proceedings, after the respondent attained the age of superannuation. However, the writ Court allowed the writ petition by following the decision of the Hon'ble Full Bench in the case of **S.ANDIYANNAN VS. THE JOINT REGISTRAR, CO-OPERATIVE SOCIETIES, MADURAI** reported in **2015(4) CTC 1**. The appellants filed the present writ appeal, which was heard by the Division Bench to which one of us (T.S.S.J.,) was a party. The writ appeal was dismissed, by judgment dated 28.06.2017 by following the Division Bench judgment. Subsequently, the third appellant filed review application in Rev.Aplc(MD).No.184 of 2017 and by order dated 30.11.2017, the review application was allowed and the writ appeal was restored to file by this Court. For better appreciation the order is extracted herein below:

Heard Mr.S.Seenivasagam, the learned counsel appearing for the petitioner, Mr. C. Venkatesh Kumar appearing on behalf of M/s. Ajmal Associates, for the first respondent/writ petitioner, and Mr.V.R.Shanmunathan, the learned Special Government Pleader for the respondents 2 to 4.

2. This Review Application has been filed by the President (the Administrative Officer) of the Thalavapalayam Primary Agricultural Co-operative Credit Society Ltd., who was the third appellant, in Writ Appeal (MD) No.539 of 2016.



3. The said Writ Appeal was filed by the review applicant/Society and three others, challenging the order passed in W.P.(MD).No.2289 of 2015, dated 04.01.2016. The said Writ Petition was filed by the first respondent herein for issuance of a writ of certiorari, to quash the charge memo, dated 22.04.2013. The said Writ Petition was allowed, in the light of the law laid down by the Hon'ble Full Bench of this Court, in the case of **S. Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai) [(2015) 4 C.T.C. 1.** The Hon'ble Full Bench held that, if the service rules or bylaws does not empower the employer to continue the departmental proceedings, after the employee retired from service, such proceedings cannot be continued. As against the order passed in the Writ Petition, the appellants preferred Appeal, and we concurred with the findings rendered by the Writ Court only on the ground that, it is covered by the decision of the Hon'ble Full Bench, in **S. Andiyannan's case (supra).** In fact, we recorded the submission of the learned counsel appearing for the appellants that the respondent, (first respondent herein), in spite of having swindled a huge amount of public money, cannot be brought to books on account of a technical plea. The reference has been answered by the Hon'ble Full Bench, and it would bind us and accordingly, we dismissed the Writ Appeal.

4. The present review applicant, though one of the appellants in the Writ Appeal, has now independently filed this Review Application, admitting that, certain factual details were not placed before the Division Bench, while the Appeal was heard. In this regard, the review applicant has drawn our attention to the Special By laws of the Society, relating to the service condition of the employees of the petitioner/Society, with particular reference to By law No.31 (4). It is submitted that, in terms of the said By law, the employee under suspension shall not be allowed to retire on attaining the age of superannuation, and his suspension shall be deemed to have been extended till the disposal of the disciplinary proceedings against him. It is, therefore, submitted that the charge memo cannot be quashed, and the decision of the Hon'ble Full Bench, in **S. Andiyannan's case** will not apply to the facts of the case.



5. As fairly submitted by the learned counsel appearing for the review applicant, this point was not urged by the appellants when the Appeal was argued, nor raised in the memorandum of grounds of Appeal. However, this is being a legal issue, we are inclined to entertain the Review Application and with a view to grant an opportunity to the first respondent/writ petitioner to contest the matter on merits, we deem it appropriate to recall the judgment, dated 28.06.2017, passed in W.A.No.539 of 2016, and the Writ Appeal is restored to the file of the Court to be heard and disposed of afresh.

6. For the reasons stated above, this Review Application is allowed, and the judgment, dated 28.06.2017, passed in W.A.No.539 of 2016 is set aside, and the Writ Appeal is restored to the file of the Court to be heard and disposed of afresh by the regular Bench. The parties are liberty to file additional pleadings within a period of two weeks. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

5. Today we have heard the learned counsel for the appellant and perused the materials placed before this Court.

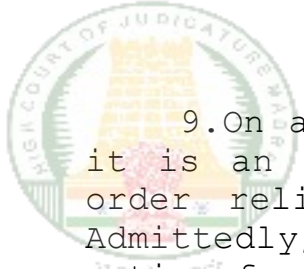
6. The short question, which falls for consideration in this appeal is whether on account of the decision of the Hon'ble Full Bench, the impugned charge memo can be quashed.

7. The contentions raised by the learned counsel for the respondent/writ petitioner is that in terms of the Bye-law No.31 (4) of the Bye-law, the Board of the third appellant Society is entitled to extend the period of suspension of an employee till the disposal of the disciplinary proceedings against him. However, in the instant case, the respondent/writ petitioner was allowed to retire and therefore, even assuming that there was a special Bye-law to the effect of continuing the disciplinary proceedings beyond the age of retirement, the same will not apply to the case of the respondent, if he was allowed to retire.

8. We have perused the order passed by the second appellant dated 29.06.2013, which reads as follows:

"ஆணை

திரு.ம.சுப்பராயன் செயலாளர் (பொறுப்பு) ஏற்கனவே தற்காலிக பணிநீக்கத்தில் உள்ளார். இவர் வயது முதிர்வின் காரணமாக 30.06.2013 அன்று பிற்பகல் ஓய்வு பெற உள்ள நிலையில் இவர் மீது ஏற்கனவே நிலுவையில் உள்ள ஒழுங்கு நடவடிக்கைக்கு குந்தகமில்லாமல் சங்கப் பணியில் இருந்து 30.06.2013 பிற்பகல் விடுவிக் கப்படுகிறார்."



9. On a perusal of the above order, it is evidently clear that it is an order not permitting the petitioner to retire, but an order relieving him from service with effect from 30.06.2013. Admittedly, no order permitting the respondent/writ petitioner to retire from service was passed and the respondent was deemed to be retained in service as he was only relieved from his duties and responsibilities. Therefore, by special Bye-law 31(4), of the third appellant Society will clearly cover the case on hand and the decision of the Hon'ble Full Bench cannot be applied to the facts of the present case as observed by the Hon'ble Full Bench in Paragraph No.30 of the judgment.

10. Thus, for the above reasons, the disciplinary proceedings cannot be quashed on the ground raised by the respondent/writ petitioner. Accordingly, the writ appeal filed against the order in W.P.(MD).No.2289 of 2015 is allowed and the writ petition is dismissed and the respondent is directed to participate in the disciplinary proceedings. The payment of gratuity and other benefits shall be subject to the outcome of the writ petitions. Since the respondent has been relieved from service, we direct that the disciplinary proceedings shall be concluded within a period of three weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Registrar of Co-operative Societies,
Additional Building District Collectorate Complex,
Thanthonimalai,
Karur District.
2. The Deputy Registrar of Co-operative Societies,
No.149, Anna Nagar Main Road,
Thanthonimalai,
Karur District.

+1cc to Mr.C.Selvaraj, Advocate Sr.No.56365
+1cc to M/s.Ajmal Associates, Sr.No.56686

NS

VB/SV/MMS/SAR1/25.05.2018/5P/5C

**W.A. (MD) .No.539 of 2016 and
C.M.P. (MD) .No.3864 of 2016
19.03.2018**