



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2017

Coram:

**The Hon'ble Mr. Justice T.S. Sivagnanam
and
The Hon'ble Mr. Justice P. Velmurugan**

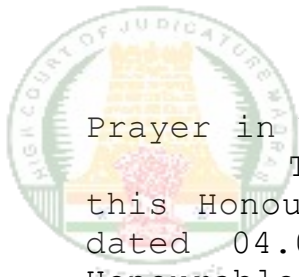
**Review Application (MD) No.184 of 2017
in
WA(MD).No.539 of 2016
and
CMP (MD) No.8299 of 2017**

The President (The Administrative Officer),
R.1598, Thalavapalayam Primary Agricultural,
Co-operative Credity Society Ltd.,
Thalavapalayam Post,
Manmangalam Taluk,
Karur District. ... Review Petitioner/3rd Appellant

Vs.

1. M. Subburayan, Secretary (In charge) Retd.
R.1598, Thalavapalayam Primary Agricultural,
Co-operative Credity Society Ltd.,
Thalavapalayam Post, Manmangalam Taluk,
Karur District. ...1st Respondent/1st Respondent
2. The Joint Registrar of Cooperative Societies,
Additional Building, District Collectorate Complex,
Thanthonimalai, Karur District.
3. The Deputy Registrar of Cooperative Societies,
Additional Building, District Collectorate Complex,
Thanthonimalai, Karur District.
4. The Enquiry Officer,
R.1598, Thalavapalayam Primary Agricultural,
Co-operative Credity Society Ltd.,
Thalavapalayam Post,
Manmangalam Taluk,
Karur District. ...Respondents 2 to 4/Appellants 2 to 4

Review Application, filed under Order 47 Rules 1 and 2 read
with 114 of C.P.C. to review the judgment, dated 28.06.2017,
passed in W.A.No.539 of 2016.
<https://hcservices.ecourts.gov.in/hcservices/>



Prayer in WA(MD). 539/ 2016 :

To prefer this memorandum of grounds of Appeal before this Honourable Court against the order passed by the this Court dated 04.01.2016 in WP.(MD).No.2289/2015 on the file of this Honourable Court.

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Prayer in WP(MD). 2289/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari or any other appropriate writ or order or direction in the nature of writ calling for the records relating to the impugned charge memo issued by the 3rd respondent in his proceedings No.Nil dated 22.4.13 and quash the same as illegal.

For Review Petitioner : Mr.S.Seenivasagam

For Respondent-1 : Mr.C. Venkatesh Kumar for
M/s. Ajmal Associates

For Respondent-2 to 4 : Mr. V.R. Shanmunathan
Special Government Pleader

O R D E R

(Order of the Court was made by **T.S.Sivagnanam. J.,**)

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. Andiyanan 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, through 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.

Sd/-

Assistant Registrar(RTI)

/True Copy/



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and
CMP (MD) No.8299 of 2017
30.11.2017