IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.22398 of 2011

D.Kumaraswamy .. Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies, Tiruvallur Region, Tiruvallur.

2.The Special Officer
Saidapet Co-operative Primary
Agriculture and Rural Development
Bank Ltd., G-1030, No.22
Tank square street, Saidapet
Chennai-15. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the order dated 31.12.2010 in Na.Ka.No.3965/09/A3 of the 1st respondent, confirming the order of dismissal dated 06.04.2009 of the 2nd respondent, quash the same and direct the respondents to grant all consequential service benefits to the petitioner.

For Petitioner	:	Mr.P.Selvaraj
For R1	:	Mr.D.Venkatachalam Additional Government Pleader
For R2	:	Mr.A.Saranraj for M/s.N.Nithianandam

O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the order dated 31.12.2010 in Na.Ka.No.3965/09/A3 of the 1st respondent, confirming the order of dismissal dated 06.04.2009 of the 2nd respondent, quash the same and direct the respondents to grant all consequential service benefits to the petitioner.

2.According to the petitioner, while he was working as Secretary in the 2nd respondent Bank, he was suspended from service on 29.05.2003. A charge memo dated 05.05.2005 containing three charges was issued to the petitioner. The petitioner submitted his explanation on 31.05.2005. A domestic enquiry was conducted. The Enquiry Officer submitted his report dated 13.09.2008 holding that first two charges were proved and the third charge was not proved. The 2nd respondent has issued 2nd show cause notice dated 25.10.2008 and the petitioner submitted his explanation on 19.11.2008. Inspite of the explanation submitted by the petitioner, the 2nd respondent by order dated 06.04.2009, dismissed the petitioner from service. The revision filed by the petitioner before the 1st respondent was also dismissed by the order dated 31.12.2010. The petitioner has filed the present writ petition challenging the order of dismissal passed by the 2nd respondent as confirmed by the 1st respondent.

3.The learned counsel appearing for the petitioner contended that the petitioner is not responsible or has no power to sanction NFS loan. The State Land Development Officers only have power to sanction the loan. They have only committed misconduct and against them, disciplinary proceedings, surcharge proceedings and criminal proceedings were initiated. No surcharge proceedings and criminal proceedings were initiated against the petitioner. When the Enquiry Officer has held that third charge is not proved, the same reasoning applies for the charges 1 and 2 also. The petitioner retired from service on 30.06.2003 on attaining the age of superannuation. There is no special by-laws, which permits the 2nd respondent Bank to continue the disciplinary proceedings after retirement of the petitioner and prayed for allowing the writ petition. In support of his contentions, the learned counsel relied on the following judgment of the Full Bench of this Court reported in 2015 (4) CTC 1 (S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai-2 and another):

> "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 proceeding, 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.
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> 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.
>
> Answering the Questions 1 & 2 referred to this Bench, the matter is ordered to be remitted back to the Reference Court for disposal, according to law.”

4.Mr.D.Venkatachalam, the learned Additional Government Pleader appearing for the 1st respondent contended that petitioner was the Chief Executive of the 2nd respondent Bank and it is his duty to verify the loan application and details of the persons, who applied for the loan. The petitioner has failed to discharge his duties and was responsible for the fraud being committed and caused huge loss to the 2nd respondent Bank. The learned Additional Government Pleader relied on the judgment of the Division Bench of this Court reported in 2010 (2) CTC 234 (The Registrar of Co-operative Societies, Kilpauk, Chennai-10 and another vs. G.Manoharan and Villupuram District Central Co-operative Bank, represented by its Special Officer, No.2, Hospital Road, Villupuram) and contended that when an employee has caused loss to the Society or Bank, even after his retirement, disciplinary proceedings can be initiated or continued. In the present case, the petitioner due to his failure to perform his duty, has caused huge loss to the 2nd respondent Bank and the disciplinary proceedings continued after his retirement is valid. The proven misconduct is grave in nature and order of dismissal and the rejection of revision by the respondents is proper and prayed for dismissal of the writ petition.

5.In reply, the learned counsel appearing for the petitioner contended that the petitioner is not responsible for any loss alleged to have been caused to the Bank and no surcharge proceedings is initiated against the petitioner, while the surcharge proceedings are initiated only against the State Land

Development Bank Officers. In view of the same, the judgment relied on by the learned Additional Government Pleader appearing for the 1st respondent is not applicable to the facts of the present case and prayed for allowing the writ petition.

6.Mr.A.Saranraj, the learned counsel representing Mr.N.Nithianandam, the learned counsel appearing for the 2nd respondent, has reported no instructions.

7.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the 1st respondent and perused the materials available on record.

8.The issue to be decided in the present writ petition is whether the disciplinary proceedings continued after retirement of the petitioner and punishment of dismissal confirmed by the 1st respondent after retirement is legal?

9. It is not in dispute that the petitioner retired from service on 30.06.2003. The contention of the learned counsel appearing for the petitioner that there is no special bye-laws relating to service conditions of the 2nd respondent Bank, which permits the 2nd respondent Bank to continue the disciplinary proceedings after retirement of employee like the petitioner, is not disputed by the 2nd respondent. In view of this admitted position, the next question to be decided is whether the judgment of the Division Bench of this Court relied on by the learned Additional Government Pleader appearing for the 1st respondent is applicable to the facts of the present case. The Division Bench of this Court in the said judgment held that if an employee has caused loss to the society, disciplinary proceedings can be initiated or continued even after retirement of the said employee. In the present case, the first charge is that the petitioner was responsible for the fraud being committed and responsible for huge loss being caused to the 2nd respondent Bank. The learned counsel appearing for the petitioner contended that only the State Land Development Bank Officers have power to sanction NFS loan, they are only responsible for the fraud being committed and surcharge proceedings, criminal proceedings and disciplinary proceedings were initiated against the said officials and no surcharge proceedings or criminal proceedings are initiated against the petitioner. Further contention of the learned counsel appearing for the petitioner that if really, the petitioner was responsible for the financial loss caused to the 2nd respondent Bank, the 2nd respondent could have initiated surcharge proceedings against the petitioner also along with other officers, has considerable force. The fact that no surcharge proceedings was initiated against the petitioner for recovery of amounts for the loss alleged to have been caused to the 2nd

respondent Bank clearly shows that the petitioner is not responsible for any financial loss caused to the 2nd respondent Bank. In view of the same, the judgment of the Division Bench of this Court relied on by the learned Additional Government Pleader appearing for the 1st respondent referred to above is not applicable to the facts of the present case. Admittedly, there is no special bye-laws permitting the 2nd respondent Bank to initiate and continue the disciplinary proceedings against the employee after his retirement. The judgment of the Full Bench of this Court relied on by the learned counsel appearing for the petitioner reported in 2015 (4) CTC 1 (S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai-2 and another), is squarely applicable to the facts of the present case. For the above reason, the order of dismissal passed by the 2nd respondent, confirmed by the 1st respondent is liable to be set aside and it is hereby set aside.

10.In the result, the writ petition is allowed as prayed for. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Joint Registrar of Co-operative
Societies, Tiruvallur Region
Tiruvallur.

2.The Special Officer
Saidapet Co-operative Primary
Agriculture and Rural Development
Bank Ltd., G-1030, No.22
Tank square street, Saidapet
Chennai-15.

+1cc to the Govt.Pleader, vide SR.No.62419
+1cc to Mr.P.Selvaraj, Advocate, SR.No.62233

W.P.No.22398 of 2011

Kak(18/09/2019)