IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.22461 of 2011

V.N.Balu ... Petitioner

Vs.

1.The Joint Registrar of Co-operative Society,
Vellore Zone,
Vellore.

2.Vellore District Central Co-operative Bank Limited,
Rep. by its Special Officer,
Vellore.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the concerned records from the first respondent and quash the order of the first respondent dated 08.06.2010 in Na.Ka.No.11611/09 A2 Revision Petition No.25/09 A2 in so far as reducing the punishment to two increment cut and recovering the same from the terminal benefits of the petitioner and consequently direct the second respondent to pay the terminal benefits of the petitioner, gratuity, encashment of leave salary, etc., along with interest at the rate of 18% per annum from the date of retirement of the petitioner till the date of the payment.

For Petitioner : Mr.Balan Haridas
For Respondents: Mrs.T.Girija, Government Advocate for R1
: Mr. L.P.Shanmuga Sundaram,
Special Government Pleader for R2

O R D E R

The present writ petition has been filed against the order passed by the first respondent dated 08.06.2010 in Na.Ka.No.11611/09 A2 Revision Petition No.25/09 A2, in so far as reducing the punishment to two increment cut and recovering the same from the terminal benefits of the petitioner and consequently direct the second respondent to pay the terminal benefits of the petitioner, gratuity, encashment of leave salary, etc., along with interest at the rate of 18% per annum from the date of retirement of the petitioner till the date of the payment.

2. The case of the petitioner is as follows:-

(i) The petitioner while working as Field Manager under the second respondent, was issued with a charge memo dated 10.02.2007, framing certain articles of charges against him. The petitioner submitted his representation on 05.03.2007, denying the charges. Not satisfied with the explanation given by the petitioner, an enquiry was conducted on 11.01.2008 and on the same day, it was concluded by merely obtaining statement from the petitioner and no documents were marked during the enquiry and no witnesses were examined.

(ii) On 29.02.2008, a report was submitted by the Enquiry Officer holding the charges proved against the petitioner. Against which, the petitioner submitted his representation on 13.03.2008. In the meanwhile, the petitioner attained the age of superannuation and was permitted to retire on 31.03.2008, without prejudice to the pending disciplinary action initiated against him. Ultimately on 28.08.2009, the disciplinary authority imposed the penalty of five increment cut from the terminal benefits payable to the petitioner after his retirement.

(iii) The petitioner approached the revisional authority against the order passed by the disciplinary authority and inter alia contended that the imposition of penalty after the retirement of the petitioner is without jurisdiction, since the service rules did not provide for imposition of penalty on the retired employees of the second respondent Bank. However, the revisional authority by an order dated 08.06.2010, has overlooked the crucial legal objection raised by the petitioner and passed an order by modifying the penalty into one of two increment cut in the terminal benefits payable to the petitioner. The modified order is the subject matter of challenge in the present writ petition.

3. The learned counsel for the petitioner would submit that the issue of jurisdiction of the authority to impose penalty after the retirement of the petitioner, was directly covered by the decision of the Full Bench of this court, reported in 2015 (4) CTC Page 1, in the case of S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another. In fact, the learned counsel would draw the attention of this Court to an order passed on the basis of the Full Bench order in W.P.No.31628 of 2013 dated 22.09.2017.

4. The learned counsel would particularly draw the attention of this Court to paragraph Nos.5 to 8, wherein, this Court has

allowed the similar writ petition having similar circumstances. The above said paragraphs are extracted hereunder:-

"5. Mr.Balan Haridas, the learned counsel appearing for the petitioner would submit that the punishments which were imposed on the petitioner were after the date of the petitioner attaining the age of superannuation on 31.07.2012 and therefore, the punishments cannot be countenanced in law, since under the service rules, the respondents cannot proceed with the disciplinary action after retirement of the employee. According to the learned counsel, in respect of charge memo dated 09.03.2010, the second respondent passed an order dated 27.02.2013, imposing the punishment of stoppage of increment with cumulative effect and as regards earlier charge memo dated 28.11.2011, in which, the enquiry officer submitted a report holding charges were not proved and in view of the report, further action was dropped in the said matter. In respect of other charge memo dated 07.12.2006, wherein, the enquiry officer found charges were not proved, however, disciplinary authority notwithstanding the findings of the enquiry officer, imposed a punishment of recovery of a sum of Rs.66,174/- along with interest by order dated 27.02.2013. In respect of last charge memo, a punishment of stoppage of increment for one year without cumulative effect was imposed on the same day i.e., on 27.02.2013.

6. The learned counsel would submit that these punishment orders issued by the second respondent suffer from want of jurisdiction since no disciplinary action could be continued beyond the retirement of the petitioner as per the relevant service Rules. In support of his contention, the learned counsel would rely on the judgment of the Full Bench of this Court reported in 2015 (4) CTC Page 1 (S. Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another). The Full Bench of this Court has held that the disciplinary proceedings against the retired employee cannot be continued in the absence of Rules enabling authority to proceed with the disciplinary proceedings even after the retirement. In view of the judgment of the Full Bench, the learned counsel would contend that the second respondent had no jurisdiction to pass order on 31.07.2012 stating that the petitioner was permitted to retire without prejudice to the pending disciplinary action. Further, the first respondent, by order dated

03.09.2013, confirming the order of the second respondent without appreciating the legal position, suffers from total non application of mind and the order passed by the first respondent is contrary to the law as declared by the Full Bench of this Court. He would therefore, impress upon this Court to set aside the order passed by the first respondent dated 03.09.2013.

7. Upon notice, Mr.L.P.Shanmugasundaram, learned Special Government Pleader entered appearance for the first respondent and Ms.T.Girija, learned Government Advocate entered appearance for the second respondent and filed a detailed counter affidavit and made their submissions. The facts as stated above have not been controverted by the learned counsel appearing for the respondents. The learned counsel would have no quarrel with the legal proposition as laid down by the Full Bench of this Court as stated supra, namely, that the retired employees of the Co-operative Society cannot be proceeded with by the Department after their retirement.

8.In view of the submissions of the learned counsel representing rival parties and also the facts and the legal position as explained above, this Court, is in entire agreement with the submissions made on behalf of the learned counsel for the petitioner that the original order of the second respondent dated 31.07.2012, permitting the petitioner to retire from service 'without prejudice to the pending disciplinary action' cannot be sustained in law. The impugned order dated 03.09.2013 passed by the first respondent in revision petition, over looking the legal position as explained above and confirming the order passed by the second respondent dated 31.07.2012, is per se illegal and contrary to the law declared by the Full Bench of this Court as stated supra. In the said circumstances, this Court has no other option except to accept the case of the petitioner. Therefore, the impugned order dated 03.09.2013 in Na.Ka.No.8812/2012 A2 passed by the first respondent is set aside. There shall be a consequential direction to the respondents to settle all the terminal benefits due, and payable to the petitioner with all other attendant benefits. Such exercise shall be completed by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.

5. The learned counsel for the petitioner even otherwise would submit that on merits, the petitioner is entitled to succeed, since no witnesses were examined nor any documents were marked in support of the charges framed against him. Therefore, the findings of the Enquiry Officer is unsupported by any evidence and the imposition of penalty on the basis of such flawed finding, is unsustainable in law. The learned counsel would further submit that the revisional authority has overlooked the total absence of evidence against the petitioner and also overlooked the legal objections raised by the petitioner in regard to the jurisdiction of the disciplinary authority who imposed the penalty after the retirement of the petitioner. Therefore, the impugned order passed by the revisional authority, cannot be countenanced both in law and on facts.

6. The learned Special Government Pleader appearing for the respondents would submit that the charges framed against the petitioner were serious in nature and therefore, the disciplinary authority imposed the penalty of five increment cut in the terminal benefits due to the petitioner. In fact, the revisional authority had taken into consideration the retirement of the petitioner and modified the penalty in favour of the petitioner by reducing the original penalty of five increment cut into two increment cut. Therefore, the petitioner cannot have any legitimate grievance to complain against the order passed by the revisional authority, which is impugned in the present writ petition.

7. This Court is unable to appreciate the arguments advanced on behalf of the respondents, in view of the law laid down by the Full Bench of this Court as aforementioned and in view of the order passed by this Court on 22.09.2017. As rightly contented by the learned counsel for the petitioner that this Court in identical circumstances, has allowed the writ petition by holding that the authorities have no jurisdiction to continue the disciplinary action, once the employee of the Co-operative Society is allowed to retire and there is no legal provision to continue the disciplinary action in such matters.

8. In view of the decision of the Full Bench and also the decision of this Court, the disciplinary authority's action in imposing the penalty on the petitioner on 28.08.2009, well after the retirement of the petitioner on 31.03.2008, cannot be sustained in law, since the same has been contrary to the decision of the Full Bench as well as the decision of this Court rendered in similar circumstances vide its order dated 22.09.2017. In view of the debarment of continuing the disciplinary action against the retired employee of the Co-

operative Societies, the order passed by the disciplinary authority would suffer from vice of illegality being without jurisdiction. Moreover, as rightly contended by the learned counsel for the petitioner that even otherwise it is a case of no evidence, since, in the enquiry, no witnesses were examined nor any documents were marked. Therefore, the entire disciplinary action stood vitiated as unsupported by any evidence holding the charges proved against the petitioner. Therefore, in all counts, this Court is of the view that the petitioner has made out a case for grant of relief.

9. In the above said circumstances, the impugned order dated 08.06.2010 in Na.Ka.No.11611/09 A2 Revision Petition No.25/09 A2, is hereby set aside and the respondents are directed to disburse whatever amounts that are otherwise due and payable to the petitioner towards the terminal benefits, within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Registrar of Co-operative Society,
Vellore Zone,
Vellore.

2.The Special Officer,
Vellore District Central Co-operative Bank Limited,
Vellore.

+1cc to Mr. L.P.Shanmuga Sundaram, Advocate sr.28830
+1cc to Government Pleader sr.28563

W.P.No.22461 of 2011

nr 20/06/2019