

IN THE HIGH COURT OF JUDICATURE AT MADRAS

25.07.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.17064 of 2019
and
W.M.P.No.16621 of 2019

R.Dhayalan ... Petitioner

Vs.

1.The Joint Registrar,
Tiruvannamalai Region,
Tiruvannamalai

2.The Management,
V.T.742, Tiruvannamalai District
Consumer Co-operative Wholesale Stores,
Rep.by its Co-operative Sub-Registrar/
Managing Director,
Tiruvannamalai Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the connected records from the first respondent, quash the order of the first respondent dated 29.11.2018 in Revision Petition No.7/2017 Sa.ba (Na.Ka.6124/2017/Saba and the order of the 1st respondent dated 13.02.2019, bearing Na.Ka.No.394/2019, Sa.Ba as illegal, arbitrary and contrary to law and consequently direct the 2nd respondent to pay the terminal benefits of the petitioner such as Gratuity, Provident Fund, Leave Encashment etc., along with interest at the rate of 18% per annum from the date when it became payable viz., 31.05.2017 and pass orders on the same on its merits and in accordance with law, within the time frame stipulated by this Court.

For Petitioner .. Mr.Balan Haridas

For Respondents .. Mr.L.P.Shanmughasundaram,
Spl.G.P.

ORDER

The petitioner was issued with a charge memo, while he was working as Assistant, on 20.03.2017, containing three articles of charges. In response to the charge memo, the petitioner submitted his explanation on 25.03.2017, denying the charges. Being not satisfied with the explanation, an enquiry was conducted into the charges. The enquiry report was submitted on 18.5.2017 and the petitioner has also submitted his explanation to the Enquiry Report, on 03.06.2017. In the meanwhile, the petitioner had attained the age of superannuation on 31.05.2017, but however, he was not allowed to retire in view of the disciplinary proceedings pending against him.

2. The petitioner, aggrieved by the order passed by the second respondent on 31.05.2017, filed a revision petition before the first respondent under Section 153 of the Tamil Nadu Co-operative Societies Act. The Revision Petition was dismissed on 29.11.2018, against which, he preferred a Review Petition under Section 154 of the Act, on 03.01.2019. In both the Revision Petition as well as in the Review Petition, the petitioner pointed out that once an employee of the Society reached the age of superannuation, no disciplinary action could be initiated or continued against him, beyond the date of his retirement, as held by the Full Bench of this Court and followed by the single Judge of this Court in W.P.No.31628 of 2013. However, the Review was rejected on 13.02.2019. Therefore, the petitioner is before this Court challenging the order in Revision Petition dated 29.11.2018 and the rejection order dated 13.02.2019.

3. On notice, Mr. L.P. Shanmugasundaram, the learned Special Government Pleader entered appearance for R1 and R2 and filed a detailed counter affidavit.

4. Mr. Balan Haridas, the learned counsel appearing for the petitioner would submit that the issue raised in the writ petition is directly covered by the decision of this Court rendered in W.P.No.31628 of 2013 (N. Elangovan vs. 1. The Joint Registrar of Co-operative Societies, Vellore Zone, Vellore and another), dated 22.09.2017, in which, the ruling of the Full Bench of this Court, in the judgment in S. Andiyannan v. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another [2015(4) CTC page 1], that disciplinary proceedings against the retired employee cannot be continued in the absence of Rules enabling the authority to proceed with the disciplinary proceedings even after the retirement, has

been followed and ultimately, this Court allowed the writ petition, wherein punishment was imposed on the petitioner therein after his retirement. The learned counsel would draw the attention of this Court to Paragraph No.8, which is extracted hereunder.

"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. Consequently, connected miscellaneous petition is closed."

5. On behalf of the respondents, a detailed counter affidavit has been filed. According to the counter affidavit and also according to the learned Special Government Pleader for the respondents, the petitioner has submitted his explanation to the enquiry report on 03.06.2017 and final order is yet to be passed on the explanation. According to the counter affidavit if only the petitioner had submitted his explanation before 31.05.2017, the disciplinary case might have been disposed of before his retirement and according to the counter affidavit, the writ petition filed by the petitioner in W.P.No.8567 of 2017, questioning the suspension order was

in fact dismissed as not maintainable vide order dated 11.07.2017.

6.The petitioner, according to the the learned Special Government Pleader for the respondents, has submitted explanation only on 03.06.2017 after the date of his attaining superannuation on 31.05.2017. Therefore, he would submit that the petitioner cannot take advantage of the date of retirement and seek for quashing the disciplinary proceedings, pending against him.

7.Heard the learned counsel for the petitioner Mr.Balan Haridas and Mr.L.P.Shanmugha Sundaram, the learned Special Government Pleader appearing for the respondents and perused the materials and pleadings placed on record.

8.As rightly contended by the learned counsel for the petitioner the issue is squarely covered by the judgment of the Full Bench of this Court in S.Andiyannan's case, which is referred to by this Court in its earlier order dated 22.09.2017 in W.P.No.31628 of 2013. Once it is held by the Full Bench of this Court that there is no enabling provision in the Tamil Nadu Co-operative Societies Act to continue the disciplinary action against the employees after their retirement, under no circumstances the disciplinary action could be continued, no matter how serious the act of misconduct committed by the employee is concerned. Since in identical circumstances, this Court has intervened and quashed the disciplinary action, this Court cannot take a different view as far as the present case on hand is concerned.

9.In view of the settled legal position and also taking into consideration the established principle in favour of the petitioner, the impugned order of the first respondent dated 29.11.2018 in Revision Petition No.7 of 2017 in Sa.Ba (Na.Ka.6124/2017/Sa.Ba) and the order dated 13.02.2019 bearing Na.Ka.No.394/2019 Sa.Ba are hereby set aside and the respondents are directed to pay the terminal benefits due to the petitioner, such as Gratuity, Provident Fund, Leave Encashment etc.,as admissible to him, within a period of eight weeks from the date of receipt of a copy of this order.

In the result, the writ petition stands allowed. No costs. Connected miscellaneous petition is closed

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Joint Registrar,
Tiruvannamalai Region,
Tiruvannamalai

2. Co-operative Sub-Registrar/
Managing Director,
The Management,
V.T.742, Tiruvannamalai District
Consumer Co-operative Wholesale Stores,
Tiruvannamalai

+1cc to Mr.L.P.Shanmugha Sundaram , Advocate SR.No. 64161

+1 cc to Spl Government Pleader Sr.No. 64192

W.P.No.17064 of 2019

A.SK(10/09/2019)



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