

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

Writ Appeal No.3133 of 2019
C.M.P.No.19862 of 2019

1. The Joint Registrar of Co-operative Societies,
Villupuram Region, Master Complex,
Villupuram 605 602.
 2. The Deputy Registrar of Co-operative Societies,
Tindivanam 604 001.
 3. The Management,
CL.Spl.148, Melpakkam Primary Agricultural
Co-operative Credit Society,
Rep., by its Administrator,
Melpakkam Village,
Iyyanthope Post, Tindivanam Taluk,
Villupuram District 604 307.Petitioner
- Vs.
- M.Elumalai ... Respondent

Writ Appeal is filed under Section 15 of the Letters Patent Act, against the order in W.P.No.25799 of 2018, dated 23.10.2018.

WP.NO.25799/2018:

Praying to issue a writ of declaration, declaring the order of the 3rd respondent dated 31.05.2018 insofar as retiring the petitioner without prejudice to the proceedings initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and without terminal benefits and stating that the retirement order will be decided based on the enquiry report under Section 81 as illegal, arbitrary and contrary to law and consequently direct the respondents to pay all the terminal benefits of the petitioner, such as, Gratuity, Provident Fund, Earned Leave Encashment along with interest at the rate of 12% per annum from

the date when it became payable within the time frame stipulated by this Court.

For Appellant : Mr.L.P.Shanmugasundaram

O R D E R

[Order was delivered by S.MANIKUMAR, J.]

Instant writ appeal has been filed, challenging the order of the writ Court in W.P.No.25799 of 2018, dated 23.10.2018, by which, this Court directed the Management, CL.Spl.148, Melpakkam Primary Agricultural Co-operative Credit Society, 3rd appellant to disburse the terminal benefits of the respondent, without prejudice to the rights of the society.

2. The facts considered by the writ Court are that respondent joined as a Salesman in the third respondent Society in the year 1987. Later, he got various promotions and according to him, rendered unblemished service. When he was about to retire from service with effect from 31.05.2018, the third appellant herein, by order dated 15.05.2018, directed the respondent to hand over the charges to one Poomalai, Head Clerk. Pursuant to the same, he handed over the charges to the aforesaid person on 19.05.2018. Subsequently, the third appellant issued an order, dated 31.05.2018, stating that the respondent was relieved from service, without prejudice to the proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act and without any terminal benefits. Contending that Section 81 proceedings were not initiated against him and no report was served on him, the respondent has filed W.P.No.25799 of 2018, challenging the order, dated 31.05.2018 and consequently, sought for direction to the appellants to pay all the terminal benefits, along with interest at the rate of 12% per annum. Following the Division Bench order, dated 23.04.2014, made in W.A.No.1856 of 2012 [R.Murugesan v. The Joint Registrar of Cooperative Societies, Thiruvannamalai and another reported in 2014 (4) MLJ 513], the Writ Court, vide order, dated 23.10.2018, allowed the writ petition.

3. Though several grounds have been raised in this appeal, we are not inclined to interfere with the order of the Writ Court, in view of the Hon'ble Full Bench of this Court in S.Andiyannan v. The Joint Registrar, Co-operative Societies, Madurai Region reported in 2015 (4) CTC 1, wherein, at Paragraphs 27 to 31, it is held as follows:

"27. A bare reading of the said Section would show that it relates to recovery of the amount from any employee or any other person who has caused financial

loss to the co-operative society. It is not in dispute that the term "surcharge" need not necessarily related to punishment being imposed on the employee. As contended by the learned counsel appearing for the petitioners, the scope of Section 87 of the Act pertaining to surcharge is to recover the amount from the person, who caused loss to the co-operative society. In the light of the decisions rendered by the Hon'ble Apex Court, it is clear that Section 87 of the Act could not be construed as an enabling provision to the authorities to continue or extent the departmental proceeding after the retirement of an employee. It is well settled in various decisions of the Hon'ble Supreme Court that if the loss caused by any employee is established, in the manner known to law, the employer / co-operative society can recover the amount, by way of surcharge with or without interest, however, surcharge proceeding cannot be initiated against any retired employee.

28. So far as the second legal question is concerned, it is crystal clear that the object of Section 87 of the Act is only to recover the loss caused to any co-operative institution by an employee, if it is established as per procedure known to law. Surcharge need not be penal in nature, if the loss caused by him is admitted by the employee or established by the authority against him, that could be recovered by the co-operative society. However, even surcharge proceedings cannot be initiated after the retirement of an employee to recover the same from his retiral benefits.

29. The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a cooperative society governed by the Tamil Nadu Co-operative Societies Act can be continued even after the retirement of the said employee. The decisions relied on by both the learned counsel have categorically make it clear that the legal position is that the authority could continue the departmental enquiry against retired employee, only subject to applicable statutory Rules or bye-law, which govern the terms and conditions of his service of the employee. Hence, the relevant Rules governing the service conditions of the employee is the determining factor as to whether and in what manner a domestic enquiry can be continued against an employee, who retired after reaching the age of superannuation. Hence, had there been any enquiry initiated while the delinquent employee was in service, it could be continued even after his retirement, subject to the

service Rules or bye-law of the co-operative society. If the service Rules relating to the employee permits for continuation, there would be no bar in continuing the departmental proceeding, that was initiated while he was in service, even after his retirement. It is also categorically held by the Hon'ble Supreme Court in the latest decisions, that in such circumstances, even if the guilt is proved, there is no possibility of imposing punishment of dismissal or removal from service, as the same is not legally sustainable.

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.

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."

4. Sections 81 and 87 of the Tamil Nadu Co-operative Societies Act, deals with the inquiry and surcharge and both the sections are extracted hereunder:

"81. Inquiry:- (1) The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one third of the members

or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry in to the constitution, working and financial condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society.

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:-

(a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall on application by the Registrar or the person authorised by him under sub-section (1), direct the delivery to the Registrar or such person of the possession of the records and properties of such society :

Provided that no such application shall be made by the person authorised under sub - section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same:

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar, or the person authorised as afore said has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e)(i) He may, notwithstanding any rule or by-law specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub-clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorised by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of section 32 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry-

(i) in case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated; and

(iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorised by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry.

87. Surcharge:- (1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by - laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under

this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any court or office,

(e) issuing commission for examining of witnesses."

5. In the case on hand, retirement benefits have been denied, on the ground that Section 81 proceedings have been initiated against the respondent. Enquiry ordered in Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, has not fructified into any proceedings, under Sections 87 of the Act, viz., surcharge proceedings. Even in the case of initiation of surcharge proceedings, a Hon'ble Full Bench of this Court in S.Andiyannan's case, has held that departmental proceedings cannot be continued, after retirement of any employee. When disciplinary proceedings cannot be continued after retirement, no punishment, much less recovery or withholding of retirement benefits, can be ordered.

6. Therefore, following the judgment in S.Andiyannan's case, instant writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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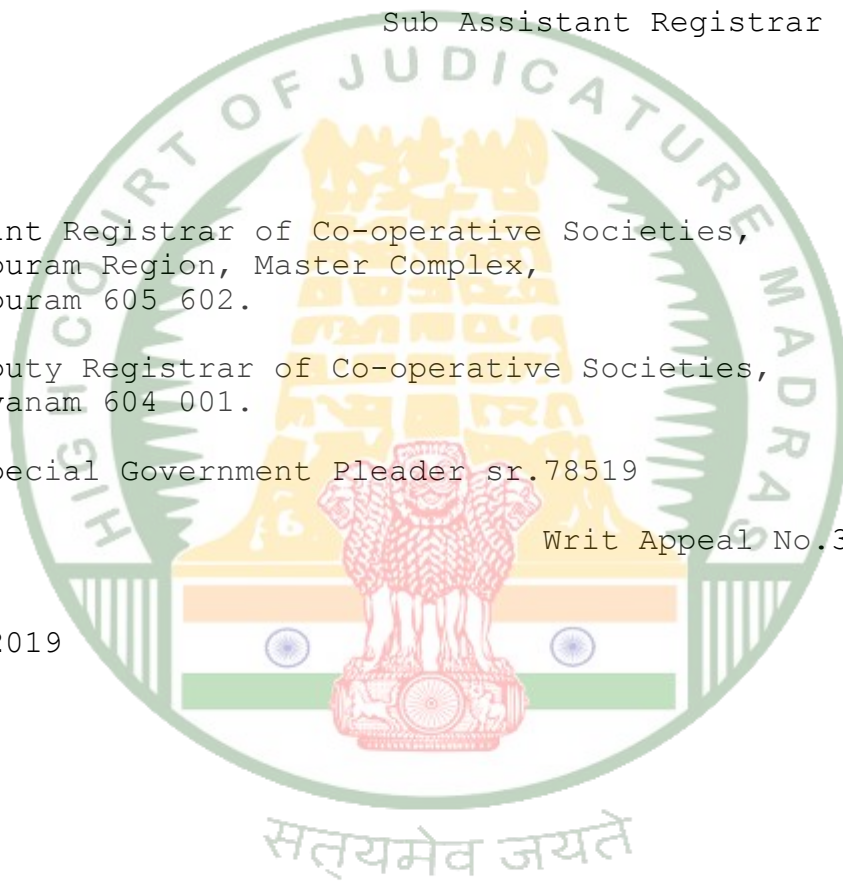
TO:

1. The Joint Registrar of Co-operative Societies,
Villupuram Region, Master Complex,
Villupuram 605 602.
2. The Deputy Registrar of Co-operative Societies,
Tindivanam 604 001.

+1cc to Special Government Pleader sr.78519

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