



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.9470 of 2015 and
M.P.(MD)No.1 of 2015 and
W.M.P.(MD)Nos.4226 and 14406 of 2016

N.Ganesan

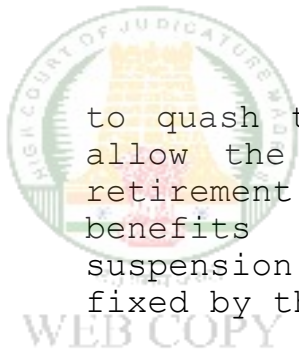
... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Co-Operative, Food and Consumer
Protection Department,
Secretariat, Fort St.George, Chennai - 600 009.
- 2.The Registrar of Co-Operative Societies,
N.V.Natarajan Maaligai,
170, Periyar EVR High Road,
Kilpauk, Chennai - 600 010.
- 3.The Joint Registrar of Co-Operative Societies,
Thanjavur Region,
Samiappa Co-Operative Institute Campus,
Medical College Road, Thanjavur.
- 4.The Deputy Registrar of Co-Operative Societies,
Thanjavur Circle,
Samiappa Co-Operative Institute Campus,
Medical College Road, Thanjavur.
- 5.The Management,
Thanjavur District Educational Department
Employees Co-Operative Thrift and Credit
Societies,
represented by its President, Thanjavur. ... Respondents

(R5 was impleaded as per order of this Court, dated 02.04.2019 in
W.M.P.(MD)No.9047 of 2017)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the third respondent in Na.Ka.No.4254/2012 Ka, dated 18.04.2015 and



to quash the same and consequently, to direct the respondents to allow the petitioner to retire from service as on the date of retirement on 31.01.2013 and to make the payment of retirement benefits including arrears of salary and regularisation of suspension period along with interest within a time frame to be fixed by this Court.

For Petitioner	:Mr.F.Deepak
For R1 to R4	:Mr.R.Murugan Additional Government Pleader
For R5	:Mr.D.Shanmugaraja Sethupathy

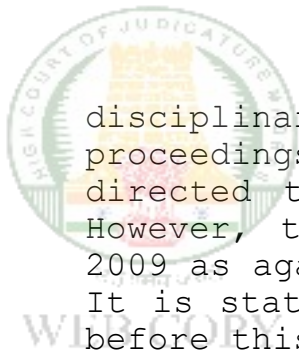
O R D E R

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus, to quash the impugned order passed by the third respondent, dated 18.04.2015 and to direct the respondents to allow the petitioner to retire from service, as on the date of retirement, ie., 31.01.2013 and to pay the retirement benefits to the petitioner including the arrears of salary and regularisation of period of suspension along with interest.

2.The petitioner was working as an Accountant in the cadre of Senior Inspector of Co-operative Societies in fourth respondent Society. Later the petitioner was posted as Special Officer for several Societies, including Thanjavur District Education Department Employees Thrift and Credit Society. When the petitioner was the Special Officer of the said Society, an Enquiry under Section 81 of Tamil Nadu Co-Operative Societies Act, was conducted by the Department and certain discrepancies/misappropriation committed by some of the employees of the Society for the period of five years from 01.11.1996, was found. Pursuant to the enquiry report, the Society initiated departmental proceedings against some of the employees. Criminal prosecution was also lodged against the employees of Society, who have committed misappropriation.

3.As against the petitioner, a criminal case was filed. Charge sheet was also issued against the petitioner and departmental proceeding was initiated against the petitioner for the alleged misappropriation. Though the petitioner's name was implicated in the criminal case and the petitioner was shown as an accused, the said criminal complaint against the petitioner was quashed by this Court and the order quashing the criminal complaint as against the petitioner was also upheld by the Honourable Supreme Court.

4.With regard to disciplinary proceedings, taking into consideration the fact that the criminal complaint as against the petitioner was quashed the by this Court, the appellate authority set aside the punishment imposed on the petitioner by the



disciplinary authority. It is also admitted that the surcharge proceedings were initiated originally and the petitioner was also directed to pay some amount towards loss caused to the Society. However, the appeal preferred by the petitioner in C.M.A.No.16 of 2009 as against the surcharge order, dated 07.01.2009 was set aside. It is stated that a revision petition preferred by the respondents before this Court in C.R.P(MD)No.1067 of 2007, is pending.

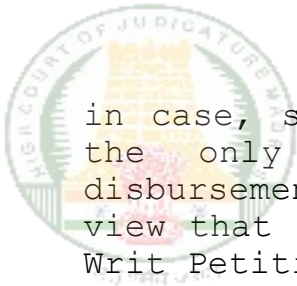
5.Since the criminal proceedings and the disciplinary proceedings initiated against the petitioner has come to an end and the petitioner was discharged from the criminal prosecution and the departmental proceedings, the learned Counsel for the petitioner submitted that the petitioner should be allowed to retire from service and his retirement benefit should be disbursed.

6.Though the learned Counsel for the fifth respondent has serious objection, his objection is on account of the apprehension that the Society will be put to much loss, especially, in case, the surcharge proceeding goes in favour of the Society by making the petitioner liable for the amount, that was found as loss to the Society on account of the delinquency of the petitioner. It is in these circumstances, the learned Counsel further pointed out that the findings of the Disciplinary Authority is based on the quashment of criminal complaint against the petitioner and that there was no positive finding in favour of the petitioner either in the criminal prosecution or in the departmental proceedings that the petitioner is not guilty of any misconduct or the charges framed against the him.

7.This Court though agrees with the learned Counsel for the fifth respondent that the findings in the disciplinary proceedings earlier was purely based on the order of this Court quashing the criminal complaint against the petitioner, this Court is of the view that the petitioner cannot be treated as person, facing criminal charges or disciplinary proceedings on account of the final verdict quashing the criminal proceedings and discharging the petitioner from all the charges in the departmental proceedings.

8.Having regard to the peculiar circumstances of the case, the learned Counsel for the petitioner submitted that by proceeding against the property of petitioner, the amount can be recovered from him upon proving the petitioner's liability in the surcharge proceedings. By persuasion, the learned Counsel for the petitioner has produced before this Court an undertaking affidavit signed by the petitioner, wherein, the petitioner has stated that he would not alienate the properties, that are attached by the fourth respondent by his order till the disposal of the revision petition, which is pending before this Court in C.R.P.(MD)No.1067 of 2009.

9.The undertaking affidavit produced before this Court can be
<https://hdservicereports.gov.in/hdservices/> solemn promise to protect the interest of the Society,



in case, surcharge proceedings goes against the petitioner. Since the only apprehension of the respondent to object timely disbursement of retirement benefits is cleared, this Court is of the view that the petitioner is entitled to the relief, he seeks in the Writ Petition.

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10. Accordingly, the Writ Petition is allowed and the impugned order passed by the third respondent, dated 18.04.2015, is quashed. The respondents are directed to permit the petitioner to retire from service with effect from the date on which the petitioner attained the age of superannuation and to disburse the retirement benefits to the petitioner and other service benefits within a period of eight weeks from the date of receipt of a copy of this order. The undertaking affidavit shall form part of this order.

11. It is made clear that in case the petitioner does anything to circumvent the order of this Court based on the affidavit of undertaking, that will be viewed seriously and the respondent may prosecute for contempt, apart from the remedy available under the provision of Tamil Nadu Co-Operative Societies Act. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (C.O)

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Sub Assistant Registrar (CS)

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To

1. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Co-Operative, Food and Consumer
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Secretariat, Fort St. George, Chennai - 600 009.
2. The Registrar of Co-Operative Societies,
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Medical College Road, Thanjavur.



4.The Deputy Registrar of Co-Operative Societies,
Thanjavur Circle,
Samiappa Co-Operative Institute Campus,
Medical College Road, Thanjavur.

+1 CC to M/s.F.DEEPAK, Advocate SR-90385.
+1 CC to SPL GP SR-90878.

W.P. (MD) No. 9470 of 2015
30.09.2019

CS (22.10.2019) 5P 7C