

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition Nos.27499 to 27501 of 2014
and M.P.Nos.2 to 2 of 2014

The Managing Director (previously Special Officer),
Vellore District Central Coop., Bank Ltd.,
3, Anna Salai (Officers' Lane),
Vellore - 632 001. Petitioner in all WPs.

vs.

1. The Joint Registrar of Co-operative Societies,
Vellore Region, Vellore.
2. J.Munirajulu
... Respondents in WP.No.27499 of 2014
1. The Joint Registrar of Co-operative Societies,
Vellore Region, Vellore.
2. S.Janakiraman
... Respondents in WP.No.27500 of 2014
1. The Joint Registrar of Co-operative Societies,
Vellore Region, Vellore.
2. K.Sivalingam (deceased)
3. Mrs.Panneerselvam
(R3-Substitute as LR of deceased K.Sivalingam/R2, as per order
dated 30.08.2018 in WMP.No.4251 of 2016 in WP.No.27501 of 2014)

... Respondents in WP.No.27501 of 2014

Common Prayer: These Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent culminating under the order dated 25.03.2014 made in Na.Ka.Nos.7843/2013/A2, 9914/13/A2 and 9928/13/A2 respectively and quash the same.

For Petitioner in all WPs:M/s.G.Thilakavathi, SC
for R.Gopinath

For R1 in all WPs

:Mr.L.P.ShanmugaSundaram,
Spl.GP.Co-op.,

For R2 in

WP.Nos.27499 & 27500 of 2014

and R3 in WP.No.27501 of 2014:Mr.Balan Haridas

COMMON ORDER

The petitioner has come up with these Writ Petitions seeking to quash the orders dated 25.03.2014 passed by the first Respondent.

2.According to the Petitioner, the respective second respondent joined the petitioner's bank as Supervisors on 25.10.1970, 15.09.1975 and 15.04.1972 respectively and were promoted as Circle Supervisors in the year 2000 and Field Managers in the year 2005. While so, they were issued with charge memos for the alleged irregularities committed by them. Pending the disciplinary proceedings, they retired from service on attaining the age of superannuation on 30.04.2009, 30.06.2010 and 29.02.2008 respectively. In the mean while, the first respondent passed the orders of punishment against the second respondent(s). Challenging the same, the second respondent(s) preferred Revision Petitions, which were dismissed on the ground of delay. Aggrieved over the same, the respective second respondents preferred Writ petitions in WP.Nos.30932, 30933 and 30934 of 2013, which were disposed of directing the first respondent to entertain the revision petitions and dispose of the same on merits and in accordance with law, within a period of sixteen weeks from the date of receipt of copy of the orders. Pursuant to the same, the first respondent disposed of the revision petitions, holding that the respective second respondents are entitled for the terminal benefits. Aggrieved over the same, the petitioner bank has preferred the present writ petitions.

3.Ms. G.Thilakavathi, learned senior counsel appearing for the petitioner submitted that the respective second respondent has committed certain irregularities, thereby causing loss to the petitioner bank, which prompted the bank to initiate disciplinary proceedings; before completion of the same, the second respondents reached the age of superannuation and hence, they were permitted to retire from service, without prejudice to the pending disciplinary proceedings. She further submitted that as per Chapter IV, Clause 19, Explanation IV of the Special By-laws relating to service conditions of the Employees of the Vellore District Central Co.op Bank Ltd., the disciplinary proceedings be continued even after the retirement of the employees and accordingly, the petitioner conducted enquiry and

passed the final orders, imposing punishment on the second respondents; without considering the said aspect in proper perspective, the first respondent erred in setting aside the said order and directed the petitioner to settle the terminal benefits to the second respondents. The act of the 1st respondent clearly reveals non-application of mind to the materials placed before it, which requires interference at the hands of this Court. It is also submitted that the petitioner bank has complied with the order of this Court dated 27.09.2018.

4. On the other hand, the respective learned counsel for the second respondents submitted that the first respondent, after analysing the pleadings and the submissions made by the parties, has rightly passed the orders impugned herein and directed the petitioner bank to pay the terminal benefits to the second respondents and hence, no interference is warranted.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respective second respondent and perused the materials placed before this Court.

6. This Court, vide order dated 27.09.2018, in respective M.P.Nos 2 of 2014, directed the petitioner bank to withhold the amount involved in the order of punishment impugned in the present writ petitions and calculate the balance amount to be paid to the employees and disburse the same within a period of eight weeks from the date of receipt of a copy of the order.

7. Admittedly, the respective second respondent worked in the petitioner bank and they retired from service during the pendency of the disciplinary proceedings. Relying on Chapter IV, Clause 19, Explanation IV of the Special By-laws relating to service conditions of the Employees of the Vellore District Central Co.op Bank Ltd., the learned senior counsel appearing for the petitioner bank submitted that even after retirement, the disciplinary proceedings could be continued against the employees, and accordingly, the same was conducted and concluded by the competent authority in the same manner as if the employee had continued in service. For better appreciation, the said provision is extracted hereunder:

"The disciplinary proceedings instituted against an employee, while he was in service, shall be deemed to be proceedings under this special bylaw, even after his retirement, and be continued and concluded by the competent authority in the same manner as if the employee had continued in service. In the event of any such disciplinary proceedings having been initiated and if the bank has reason to believe that the disciplinary proceedings will result in the removal or dismissal of the employee from service, the bank shall place the

employee under suspension, which should be used sparingly. In such cases the employee is not eligible for payment of subsistence allowance. The bank also shall not make payment of the terminal benefits like gratuity etc., payable to the employee until the disciplinary proceedings are finally concluded."

8. However, the learned counsel for the second respondent(s) drew the attention of this Court the decision in the case of N.Elangovan v. the Joint Registrar of Co-op. Societies, Vellore Zone, Vellore & Anr. (2017 SCC online Mad 29540 - WP.No.31628 of 2013 - dated 22.09.2017) wherein, this Court has referred to the decision of the Full Bench of this Court in S.Andiyappan v. the Joint Registrar, Co-operative Societies, Madurai Region, Madurai, [2015 (4) CTC 1] wherein it was held that the disciplinary proceedings against a retired employee cannot be continued in the absence of Rules enabling the authority to proceed with the disciplinary proceedings even after the retirement and allowed the writ petition in favour of the petitioner employee. The relevant portion of the said order is usefully reproduced hereinbelow:

"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. Consequently, connected miscellaneous petition is closed."

There is no quarrel with respect to the above said legal proposition which still holds the field. Keeping the above proposition of law in mind, a perusal of the Bylaws of the Society reveals that there is no enabling provision in the said Bylaw, which permits the authority to continue the disciplinary proceedings even after an employee has retired from service. No provision in the Bylaw to the said effect having been pointed out, the above said decision, relied on by the 2nd respondent squarely applies to their case and in the said backdrop, this Court is of the opinion that the orders passed by the first respondent are perfectly valid in law and the same do not require any interference.

8. Accordingly, all the writ petitions are dismissed. The petitioner bank is directed to pay all the retiral benefits to which the respective second respondent are entitled to on their attaining superannuation and shall pay the same to the respective 2nd respondent, after deducting the amount, if any, already paid to them, within a period of four weeks from the date of receipt of a copy of this order. It is needless to state that the second respondents are entitled to receive interest at the appropriate rate as applicable, for the belated payment of retiral benefits. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

av

To:

The Joint Registrar of Co-operative Societies,
Vellore Region, Vellore.

+1 CC to Mr. Balan Haridas, Advocate sr 40762.

+3 Ccs to Mr.R. Gopinath, Advocate sr 40305, 40306, 40307.

+1 CC to The Special Government Pleader sr 40368.

Writ Petition Nos.27499 to 27501 of 2014
and M.P.Nos.2 to 2 of 2014

BR(CO)
SP(16/03/2021)

WEB COPY