



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.12553 of 2009

K.Viswanathan

...Petitioner

Vs.

1. The Deputy Milk Commissioner, (Co-operation),
O/o.Commissioner of Milk Production and
Dairy Development, Chennai -51.
2. The Special Officer,
T.901, Kumbakonam Milk Producer's
Co-operative Society,
No.60, Dr.Moorthy Road, Kumbakonam.

3.S.Kaliyaperumal

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the 1st respondent in Rc.No.17608/08/M1 dated 30.06.2009 and quash the same.

For Petitioner : Mr.M.S.Palanisamy

For Respondents : Mr.S.John J.Raja Singh,
Government Advocate for R1
Mr.A.Jegannath for
Mr.A.Jenasenan for R2
No Appearance for R3.

O R D E R

Heard Mr.M.S.Palanisamy, learned counsel for the petitioner, Mr.S.John J Raja Singh, learned Government Advocate for R1 and Mr.Jegannath, learned counsel for Mr.A.Jenasenan, learned counsel, for R2. Though R3 has been served and his name printed in the cause list, there is no appearance by or on his behalf.



2. The petitioner has joined as a Cashier on 01.01.1981 in the Kumbakonam Milk Producers Co-operative Society/R2 and promoted as Accountant on 29.08.1986. Upon creation of the post of Manager in R2 Society, the third respondent/R3 was promoted as Manager.

3. It is the say of the petitioner that R3 had been appointed as a Clerk on 11.11.1981 and hence he, being senior to R3, ought to have appointed in the post of Manager, in preference to him. Various other comparisons have also been set out as between the petitioner and R3, to establish his eligibility for the post of Manager.

4. Charges of mis-appropriation appear to have been levelled as against R3, leading to his suspension and ultimate dismissal on 03.04.1990 and the petitioner was appointed as Manager (temporary) in place of R3 on 19.02.1990, and was in service in that post till 24.11.1995. In the interim, R3 had filed a petition for Revision before the first respondent challenging his suspension and dismissal and the Revision Application came to be allowed on 21.11.1995. R2 appointed a Committee to go into the question of suitability of the employment of R2 for promotion to the post of Manager and the Committee had found, upon the recommendations of the Deputy Registrar (Dairy), Thanjavur, that the petitioner was the most competent person for the post. The petitioner thus came to be appointed as Manager for the period on 30.01.2004 by order of the Deputy Registrar (Dairy), Thanjavur, in its proceedings Na.Ka.No.3002/A1/2003.

5. Thereafter, the petitioner appears to have been demoted once again to the post of Accountant by R2, vide order dated 18.10.2007. While the petitioner was holding the post of Manager, a revision application was filed by R3 in terms of Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 (in short 'Act') challenging the order of R2 dated 12.11.2007, on the basis that, by appointment of the petitioner as Manager, R3 stood demoted from the position of Manager to Clerk. In the meanwhile, order dated 18.10.2007 demoting the petitioner to the post of Accountant was challenged by way of appeal by the petitioner before the first respondent, who, vide order dated 05.08.2008, dismissed the same and confirmed order dated 18.10.2007.

6. In my view, It would have been appropriate for R1 to have heard the petitioner prior to considering the revision petition and passing order dated 30.06.2009 thereupon. Instead, what has transpired is that the revision petition has come to be allowed by the Commissioner for Milk Production and Dairy Development, by his order dated 30.06.2009 setting aside R2's



order dated 12.11.2007. It is the aforesaid order passed by R1 that has come to be challenged in the present writ petition.

7. Though an order of interim stay was obtained by the petitioner initially, it was subsequently modified to an order of status quo, as a result R3 was in service till his retirement. The petitioner has retired on 30.06.2012 and thus, as on date, neither of the rival contestants are in occupation of any post in R2 Society.

8. The only question that arises is the legality of the impugned order and in my view, R2 has grossly erred in allowing the revision petition filed by R3 without impleading the petitioner, hearing him and taking note of his submissions. This is for the reason that the decision sought by R3 in the Revision Petition has a consequence upon the position of the petitioner and he should have thus been arrayed as party, in the first place, by R3. Since that was not done, R2 should have corrected the error and brought the petitioner on Board for a comprehensive hearing of the matter.

9. The petitioner has filed an additional typed set of papers dated 10.10.2013, wherein a copy of order dated 30.06.2012 passed at the time of superannuation of the petitioner is placed on file. According to R2, the petitioner is to be relieved with all retirement benefits being withheld. The reasons stated are (i) pendency of the present writ petition (ii) surcharge proceedings by the Deputy Registrar (Dairying), Thanjavur that are stated to have been initiated as against the petitioner, while he was in service. (iii) Disciplinary action proposed for mis-appropriation and (iv) an allegation of stealthily removing properties of the Society for personal gain. As far as the 4th allegation is concerned, there is nothing stated in support of the same and is thus not, in my view, to be given any credence. As far as point 3 is concerned, disciplinary action was, even according to R2, only being proposed and admittedly no action has been initiated till date. As for point 2, though surcharge proceedings are stated to have been initiated at the time of his superannuation, a Full Bench of this Court in the case of S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another (2015-3 L.W.513) considered the question of appropriateness of continuing disciplinary proceeding even after retirement of the employee.

10. The issue framed for consideration of the Full Bench was whether disciplinary proceedings initiated as against an employee of a Co-operative Society governed by the provisions of the Act, can be continued even after his retirement and the same has been answered in favour of the petitioner. The Bench



concluded that surcharge proceedings under Section 87 of the Act do not empower the disciplinary authority to continue disciplinary proceedings as against an employee who had retired from the service in the absence of any specific service Rule or By-law.

11. Thus even assuming that surcharge proceedings had in fact been initiated and notices in this regard served upon the petitioner, the same would abate as on the date of his superannuation. In line with the direction as aforesaid, let the retirement benefits be computed and be paid over to the petitioner forthwith.

12. Learned counsel for R2 would, at this juncture, request liberty to recover the benefits that have been paid over by the Society to R3. The request is denied outright. Benefits paid over by R2 on account of an error in law committed by the first respondent cannot be recovered from R3 after his retirement and I need only to refer to the judgment of the Hon'ble Supreme Court in the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) ((2015) 4 SCC 334) to the effect that no recovery should be initiated as against an employee who had retired from service. Though not rendered specifically in the context of Co-operative Societies, the ratio of the same would more than amply apply to this situation as well.

13. In light of the discussion as aforesaid, the impugned order is set aside and the writ petition is allowed. All consequential benefits by way of notional fixation of seniority to the petitioner will be granted with the monetary benefits paid over within a period of four (4) weeks from date of issuance of this order. No costs.

Sd/-

Assistant Registrar(CS VII)

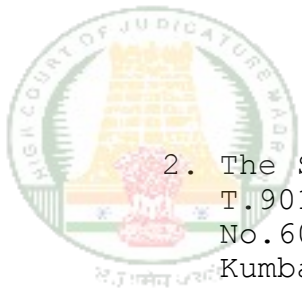
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Sub Assistant Registrar

rkp

To

1. The Deputy Milk Commissioner, (Co-operation),
O/o.Commissioner of Milk Production and
Dairy Development, Chennai -51.



2. The Special Officer,
T.901, Kumbakonam Milk Producer's Co-operative Society,
No.60, Dr.Moorthy Road,
Kumbakonam.

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+2cc to Mr.A.Jenasenan, Advocate, S.R.No.46702

+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.47156

+1cc to the Government Pleader, S.R.No.46912

W.P. No.12553 of 2009

GPL (CO)

RGA(15/11/2021)