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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 14.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.2589 of 2018

P.Raman

...Petitioner

Vs

1.The Joint Registrar of Co-op. Societies,
Cadre Authority in respect of
Primary Agricultural Co-operative
Bank Limited,
Nagapattinam, Nagapattinam District.

2.The Special Officer,
Vanduvancherry Primary Agricultural
Co-operative Bank Limited,
Vanduvanchery,
Nagapattinam Taluk and District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent relating to the order of dismissal from service dated 07.04.2011 which was confirmed by the first respondent herein in his proceeding Na.Ka.No.979/2017/A3 dated 10.11.2017 and quash the same and consequently direct the respondents to settle the retirement benefits and other dues to the petitioner with interest at the rate of 24% per annum from 01.06.2010 till the date of realization.

For Petitioner : Mr.K.Raja

For R1 : Mr.K.V.Sajeev Kumar
Government Counsel

For R2 : Mr.Rajendran
for Mr.L.P.Shanmugasundaram

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein, who was appointed as a Secretary under the second respondent Co-operative Society, was originally dismissed from service on 25.11.1997. Pursuant to a series of writ petitions and a contempt petition filed by the petitioner herein, the petitioner's order of dismissal was set aside by the Joint Registrar of Co-operative Societies and he was reinstated back into service with all back wages. Pursuant to the orders passed in the contempt petition filed by the petitioner in Cont.P.No.653 of 2003 before this Court, a sum of Rs.13,22,007/- was paid as back wages, out of which, a sum of Rs.6,22,007/- was transferred to the fixed deposit account in the name of the petitioner herein.

3. It is stated that the second respondent herein had claimed that the back wages was excessively paid to the petitioner and accordingly, disciplinary action was initiated against the petitioner and ultimately, the petitioner was dismissed from services on 07.04.2011. In the mean time, the petitioner had reached the age of superannuation on 31.05.2010 and accordingly, he was permitted to retire from service.

4. The issue was to whether, the authorities under the Co-operative Societies Act are empowered to continue the disciplinary proceedings of their employees after their retirement, came up for consideration before the Hon'ble Full Bench of this Court in the case of S.Andiyannan & another Vs. The Joint Registrar of Co-operative Societies & others reported in 2015 (4) CTC 1 and it was categorically held therein that the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act cannot be proceeded with against a retired employee. The relevant portion of the order of the Hon'ble Full Bench reads 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



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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



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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."

5. Apparently, the facts of the case reveals that the petitioner had retired from his services on 31.05.2010 and the order of dismissal, which is a continuation of the disciplinary proceedings, was initiated thereafter on 07.04.2011, which is totally contrary to the ratio laid down by the Hon'ble Full Bench in the aforesaid case. As such, the impugned order passed by the second respondent herein, as confirmed by the first respondent in the revision under Section 153 of the Act, cannot be sustained.

6. In the light of the above observation, the impugned order of dismissal dated 07.04.2011, as confirmed by the first respondent in his proceedings dated 10.11.2017, is quashed. Consequently, there shall be a direction to the respondents herein to forthwith settle all the retirement benefits to the petitioner and all other monetary dues, which may be payable to the petitioner herein, within a period of 8 weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



hvk

To

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Co-operative Bank Limited,
Vanduvanchery,
Nagapattinam Taluk and District.

+1cc to Mr.K.Raja, Advocate Sr.33753

[23/08/2021]

W.P.No.2589 of 2018

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srg 11/08/2021