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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.5859 of 2009
and M.P.No.2 of 2009

D.Karunanidhi

...Petitioner

Vs

1.The Joint Registrar of Co-operative Societies,
Kancheepuram Region,
Kancheepuram, Kancheepuram District.

2.The Management of Kongaraimampattu,
Primary Agricultural Co-op Bank,
Vadamanipakkam Post, Maduranthagam Taluk,
Kancheepuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings No.Mu.Mu.9200/2008 A-3, dated 11.02.2009 and quash the same.

For Petitioner : Mr.R.Hemalatha
for Mr.C.Prakasam

For R1 : Mr.T.Chezhiyan
Additional Government Pleader

For R2 : No Appearance

O R D E R

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2.The petitioner herein while serving as Secretary in the 2nd respondent Bank, was leveled with certain charges and pursuant to the enquiry, was imposed with the punishment of



dismissal from the service. Challenge to the dismissal order ultimately came to be dealt with by the Hon'ble Division Bench of this Court in W.A.No.759 of 2008, in which, the petitioner and the Bank had entered into a compromise, whereby, the Bank had offered to impose the punishment of "compulsory retirement" to the petitioner, which was accepted by the him. The relevant portion of the judgment in W.A.No.759 of 2008 dated 11.09.2008 is extracted hereunder:

"5.Today (11.09.2008), an affidavit dated 11.9.2008 has been filed on behalf of the appellant-Bank (Management), wherein following statement has been made:

"5.In these circumstances the Appellant agrees to modify the punishment of dismissal as one in the nature of compulsory retirement, with effect from 11.04.2003. The Appellant further submits that the retirement benefits, as admissible to the respondent, under the Special by-law's of the Society, will be paid over to him within a period of 8 weeks."

6. In the affidavit filed by the second respondent-writ petitioner, dated 5.9.2008, he has expressed his willingness to accept the order of compulsory retirement, as quoted below:

"2. I submit that when the above writ appeal came up before this Hon'ble Court on 02.09.2008 and this Hon'ble Court was pleased recorded the statements of the respondents that they going to modify the order as compulsory retirement instead of dismissal from service. Accordingly the said statement of the respondent accepted by me and also I expressed my willingness to accept the compulsory retirement to that effect this Hon'ble Court was pleased direct me to file Affidavit. Hence I am filing this affidavit for accepting the compulsory retirement.

Therefore, it is prayed



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that, this Hon'ble Court may be pleased to accept the respondents affidavit and pass orders on the basis of the statements made by the appellant for compulsory retirement and pass orders for compulsory retirement together with all retirement benefits and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

7. In the facts and circumstances, we direct the appellant-Bank to treat the order of dismissal passed against the second respondent-writ petitioner on 11.4.2003 by the Special Officer of the appellant-Co-operative Bank, as an order of compulsory retirement issued on and from 11.4.2003, with a further direction to the Management (appellant-Co-operative Bank) to pay the employee (second respondent-writ petitioner), the retirement benefits to which the employee is otherwise entitled to, under the law, in any event, not later than eight weeks from today, as agreed by the appellant-Bank in their affidavit filed today (11.9.2008).

8. The order of dismissal, dated 11.4.2003 passed by the Special Officer of the appellant-Co-operative Bank (Management) and the impugned order passed by the learned Single Judge, dated 23.4.2008 in W.P.No.35288 of 2006, stand modified to the extent indicated above.

9. The Writ Appeal is disposed of in terms of the agreement reached between the parties as recorded above."

3. In this background, the 1st respondent has now issued the impugned letter dated 11.02.2009, whereby, they now claim that a sum of Rs.4,24,990.15 is required to be recovered from the petitioner, owing to certain loss that had occurred to the Bank due to the misappropriation committed by the petitioner. Citing this reason, the retirement benefits have not been disbursed to the petitioner.

4. Admittedly, the claim is made for certain dereliction of duties prior to the date on which the Hon'ble Division Bench had recorded the Memorandum of Compromise between the parties



and permitted the 2nd respondent to impose punishment of "compulsory retirement" to the petitioner. This claim that the petitioner had caused loss to the Bank was not put forth by the respondents when the order in W.A.No.759 of 2008 came to be passed. Even otherwise, no enquiry under Sections 81 or 87 of the Tamil Nadu Cooperative Societies Act was held in order to substantiate that a sum of Rs.4,24,990.15 is due from the petitioner. In the absence of such proceedings and respondents having failed to bring it to the notice of the Hon'ble Division Bench of this Court when the order was passed, it is now not open to them to make any claim on a prior cause of action.

4.For the foregoing reasons, the impugned letter in No.Mu.Mu.9200/2008 A-3 dated 11.02.2009 is hereby quashed and there shall be a direction to the 2nd respondent to uphold the order of compulsory retirement and consequently disburse all the monitory benefits to the petitioners, within a period of eight (8) weeks from the date of receipt of a copy of this order.

5.With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1.The Joint Registrar of Co-operative Societies,
Kancheepuram Region,
Kancheepuram, Kancheepuram District.

2.The Management of Kongaraimampattu,
Primary Agricultural Co-op Bank,
Vadamanipakkam Post, Maduranthagam Taluk,
Kancheepuram District.

+1cc to Mr.C.Prakasam, Advocate SR.No.18310
+1cc to the Government Pleader, SR.No.18347

W.P.No.5859 of 2009

SVI (CO)
CB(31/03/2022)