



WEB COPY



W.P.No.14825 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.14825 of 2018 and
W.M.P.No.17531 of 2018

B.Dharmalingam

... Petitioner

Vs

1.The Additional Registrar of Cooperative Societies,
Chennai Region, 3rd Floor, TANFED Building,
No.91, St. Mary's Road, Abiramapuram,
Chennai – 18.

2.The Registrar (Housing),
O/o. The Tamil Nadu Cooperative
Housing Federation Compound, II Floor,
No.48, Ritherden Road, Vepery,
Chennai – 600 007.

3.The Deputy Registrar (Housing),
No.18, Varartha Nagar Street,
Chengulpet – 603 001.

4.The Superintendent of Police,
CCIW – CID, 1st Floor, Block II,
SIDCO, Government Complex,
Old Corporate Office Building,
T.V.K. Industrial Estate, Guindy,
Chennai – 32.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the order of the first respondent made in Rc.No.1525/2018/A2(1) dated 31.05.2018 to quash the same.



WEB COPY



W.P.No.14825 of 2018

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.R.Neethiperumal
Government Advocate for R1 & R 2
: Mr.U.M.Ravichandran
Special Government Pleader
for R3 & R4

ORDER

The prayer sought for herein is for a writ of certiorari to call for the records relating to the order of the first respondent made in Rc.No.1525/2018/A2(1) dated 31.05.2018 and to quash the same.

2. The petitioner was working as Sub Registrar of Cooperative Societies. After long years of service the petitioner attained the superannuation on 31.05.2018. However, on the date of superannuation the petitioner was not permitted to retire and in fact he has been placed under suspension by order dated 31.05.2018 on the ground that there was a surcharge proceedings against the petitioner and also was a criminal complaint filed against the petitioner which were pending and on that ground the petitioner was not permitted to retire on superannuation and hence he was placed under suspension by impugned order dated 31.05.2018.



W.P.No.14825 of 2018

3. Assailing the said order, Mr.L.Chandrakumar, learned counsel appearing for the petitioner would submit that, as against the surcharge proceedings dated 30.05.2018, the petitioner preferred appeal in C.M.A.No.20 of 2019 on the file of the Chief Judge, Court of Small Causes, Chennai and the said C.M.A.No.20 of 2019 ultimately decided by final order dated 06th June 2022 where the CMA was allowed by citing the following reasons:

“22. From the above deliberations this tribunal comes to a firm view that the proceedings of the first respondent under Sec.87 of U/s.87 of TNCS Act, 1983 not being attracted, the appellant did not gain anything from and out of the refixation of scale of pay and being ratified by the subsequent settlement arrived at u/s.12(3) of Industrial Disputes Act on 2009 with retrospective effect. As underlined in the grounds of appeal, the impugned order has been passed to save the skin of officials in helm of affairs i.e., higher pedestal and the averment that the Deputy Registrar (Credit) there after peacefully got retired from service without encountering any hurdle cannot be lost sight of.

23.In the result, the C.M.A.No.20/2019 is allowed by setting aside the order of the 1st respondent in Proceedings No.50/2018/Sa.Pa.1 Dated 30.05.2018. However, no order as to costs.”



W.P.No.14825 of 2018

WEB.COM

Therefore, insofar as the surcharge proceedings is concerned, it has been concluded in favour of the petitioner.

4. The learned counsel would also submit that, insofar as the criminal case is concerned, though a complaint had been given in this regard by the Department against the petitioner to the Superintendent of Police, CCIW-CID, Guindy, Chennai, who, in his letter dated 06.06.2018, on the query raised by the petitioner, has given the following reply:

“With reference to above subject, it has been requested to inform any case of prosecution was pending against you as on 31.05.2018 in reference 9th cited. It is to inform that the complaint relates to Ambattur Oragadam Cooperative Building Society was received vide reference 1, 3 & 5 and were returned for defect rectification as “N.Dis” in ref 2,4 & 6 cited.

The last complaint dated 30.04.2018 in reference 7th cited as noted as reference 3rd in your petition was also returned for defect rectification to DR (H) Chengalpet as N.Dis. Lr in the reference 8th cited above.

Your petition dated 14.05.2018 annexed along with reference 9th cited requesting to eliminate you from case by considering Registrar (Housing) letter addressed to Deputy



W.P.No.14825 of 2018

Registrar (Housing), Chengalpet was also sent along with this office N.Dis. letter in the reference 8th cited.

Hence, there was neither any complaint pending with Police Department nor any prosecution action is pending regarding Ambattur Oragadam Cooperative Building Society as on 31.05.2018 as mentioned in the Addl. Registrar, Chennai region proceeding in your reference 1st cited.”

5. Therefore the learned counsel for the petitioner would contend that, the two reasons cited by the respondents for placing the petitioner in suspension and also not permitting the petitioner to retire on superannuation are no more available and therefore the petitioner need not be kept under suspension for prolonged period beyond his superannuation because of which though he had been superannuated is not able to get the retiral benefits and pensionable benefits, hence the learned counsel appearing for the petitioner seeks indulgence of this Court against the impugned order.

6. In fact, when this case came up for hearing earlier on 30.06.2022, the learned Special Government Pleader appearing for the respondents submitted that, though initially the criminal complaint given



W.P.No.14825 of 2018

against the petitioner was returned for want of rectification of defects, subsequently the defects having been rectified was re-submitted and based on which investigation went on and whether the charge sheet has been filed or not should report before this Court, he contended. Recording the same, time was given to the respondents counsel to ascertain the same and report before this Court.

7. In pursuance of the same, the learned Special Government Pleader received certain written instructions from the Additional Registrar of Cooperative Societies, Chennai Region by her communication dated 11.07.2022, where, she had stated that, earlier three disciplinary proceedings were initiated against the petitioner all were concluded and punishments were awarded against the petitioner.

8. Insofar as the criminal complaint against the petitioner filed in the CCIW, Guindy is concerned, it has been numbered as 1/2018 and the said criminal case only is pending against the petitioner in the Judicial Magistrate Court, Ambattur.

9. While relying upon this written instruction, the learned Special



W.P.No.14825 of 2018

Government Pleader would contend that, earlier there were number of disciplinary proceedings against the petitioner and some of the proceedings initiated against the petitioner ended against him and punishments ultimately were inflicted against him.

10. Insofar as the present issue is concerned, though complaint initially given by the Department was returned for rectification of certain mistakes, subsequently having rectified the same it has been re-submitted and the said complaint filed by CCIW is still pending investigation and therefore, in view of the pendency of the investigation, it may not be justifiable on the part of the petitioner to seek for revocation of the suspension and permission seeking to retire from service as once the petitioner is permitted to retire from service and the suspension is revoked at this juncture, then ultimately if the criminal case is decided in favour of the Department against the petitioner, then there will be no lien between the petitioner and the respondents Department. Hence, at this juncture the question of revoking the suspension or permitting the petitioner from retiring service does not arise, he contended.

11. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials



W.P.No.14825 of 2018

placed before this Court.

WEB COPY

12. As has been rightly pointed out by the learned counsel for the petitioner, insofar as the surcharge proceedings is concerned, it has now been concluded by the orders of the Chief Judge, Courts of Small Causes, Chennai in C.M.A.No.20 of 2019 by order dated 06.06.2022, where, the CMA was allowed and the surcharge proceedings dated 30.05.2018 against the petitioner was set aside.

13. The reason stated by the said Court in setting aside the surcharge proceedings is that, the said order of surcharge proceedings was passed only to save the skin of officials in helm of affairs i.e. who are in higher pedestal and the Deputy Registrar (Credit) who was also allegedly involved had been permitted to retire without encountering any hurdle. Therefore, these situations and reasons made it very clear according to the learned Judge that the petitioner is not responsible for any such loss and moreover on the ground of limitation also, that proceedings could not have been initiated, therefore for both limitation as well as on merits, the plea of the petitioner against the surcharge proceedings was accepted by the Court and the CMA filed by him was



W.P.No.14825 of 2018

allowed. Therefore it has been concluded by the orders of the Court dated 06.06.2022 in C.M.A.No.20 of 2019 that the surcharge proceedings made against the petitioner cannot be further proceeded or further executed and accordingly it was set aside, therefore a conclusion to that effect has reached.

14. Insofar as criminal case is concerned, in fact at the time of passing the impugned order of suspension, there were absolutely no police complaint against the petitioner and this become evident in the communication of the Superintendent of Police concerned of CCIW dated 06.06.2018 which has already been quoted herein above.

15. Subsequently though it was claimed by the respondents that rectification has been made and the complaint has been registered, it is to be ascertained that the complaint registered in 2018 is still pending at the investigation stage, that means no progress has been shown for past more than four years. If no investigation is progressed by the CCIW on the complaint given by the Department, we can safely conclude that for pendency of the said complaint, the petitioner's post retiral life cannot be put in a fix like this where the petitioner even after superannuation has



W.P.No.14825 of 2018

not been permitted to retire thereby his post retiral benefits has not been extended to the petitioner.

16. The two reasons cited by the respondents for placing the petitioner in suspension and not permitting the petitioner from retiring service as rightly pointed out by the learned counsel for the petitioner either no more available or not effectively available to process further. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That the impugned order is hereby set aside. As a sequel, there shall be a direction to the respondents to permit the petitioner to retire from service on his superannuation i.e., from 01.06.2018 peacefully and the retiral benefits including pensionary benefits shall be extended to the petitioner including arrears of pension and the aforesaid needful shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

17. With this direction, this Writ Petition is ordered accordingly.



W.P.No.14825 of 2018

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.07.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl

To

- 1.The Additional Registrar of Cooperative Societies,
Chennai Region, 3rd Floor, TANFED Building,
No.91, St. Mary's Road, Abiramapuram,
Chennai – 18.
- 2.The Registrar (Housing),
O/o. The Tamil Nadu Cooperative
Housing Federation Compound, II Floor,
No.48, Ritherden Road, Vepery,
Chennai – 600 007.
- 3.The Deputy Registrar (Housing),
No.18, Varartha Nagar Street,
Chengulpet – 603 001.
- 4.The Superintendent of Police,
CCIW – CID, 1st Floor, Block II,
SIDCO, Government Complex,
Old Corporate Office Building,
T.V.K. Industrial Estate, Guindy,
Chennai – 32.

R. SURESH KUMAR, J.

Sgl



WEB COPY



W.P.No.14825 of 2018

W.P.No.14825 of 2018

25.07.2022