



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 207

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2022

Coram:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.28669 of 2017
and
W.M.P.No.30846 of 2017

M.Selvaraj

.. Petitioner

/versus/

1.The Registrar of Co-operative Societies,
No.170, N.V.N.Maalgai,
Kilpauk, Chennai-10.

2.The Additional Registrar of Co-operative
Societies (Consumer Activities),
O/o Registrar of Co-operative Societies,
No.170, N.V.N.Maligai,
Kilpauk, Chenna-10.

3.The Co-operative Sub Registrar/
Managing Director,
Perambalur District Consumer
Co-opertive Wholesale Ltd.,
Perambalur.

.. Respondents



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W.P.No.28669 of 2017
and
W.M.P.No.30846 of 207

Prayer: Writ Petition has been filed under Article 2276 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the order passed by the 3rd respondent dated 11.07.2017 quash the same in so far as it relates to the retention of right to proceed with disciplinary proceedings against the petitioner and consequently direct the respondents to settle the petitioner entire terminal benefits with 12% interest.

For Petitioner :Mr.S.Palaniswamy

For Respondents :Mr.T.Chezhiyan, AGP
for R1 and R2
Mr.L.P.Shanmughasundaram for R3

ORDER

The petitioner herein, who was an employee of the third respondent-Society, was placed under suspension, with effect from 25.05.2017 in contemplation of disciplinary proceedings. His date of superannuation is 31.05.2017. The third respondent herein has passed the proceedings dated 11.07.2017, whereby the earlier suspension order was revoked and the petitioner was relieved from his service after retirement.



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 2017

WEB COPY

2. The question that arises for consideration is as to whether the Co-operative Society can continue the disciplinary proceedings against the employee, who had reached the age of superannuation and relieved from his service.

3. This issue has been answered by the Hon'ble Full Bench of this Court in the case of ***S.Andiyannan v. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai & another*** reported in ***[2015 WLR 755]***, by holding that, in the absence of any relevant service Rules under the Tamil Nadu Co-operative Societies Act, 1983 or Bye-law of the Co-operative Societies, the disciplinary proceedings cannot be continued after the retirement of the employee. The relevant portion of the order reads as follows:-

“29.The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a co-operative society governed by the Tamil Nadu Co-operative Societies Act can be continued even after the retirement of the said employee. The decisions



WEB COPY



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 2017

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, there would be no bar in continuing the departmental proceedings, 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 decisions,



WEB COPY



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 2017

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 proceedings, 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 proceedings after the retirement of the employee.”

4. In the light of pronouncement of the Hon'ble Full Bench of this



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 207

WEB COPY

Court and in the background of the admitted fact that there is no such provision either in Tamil Nadu Co-operative Societies Act or under the Bye-law of the Society, enabling the Society to proceed with the disciplinary proceedings after his retirement, the proceedings of the third respondent dated 11.07.2017 to continue the disciplinary proceedings against the petitioner, after his retirement, requires interference.

5. In the result, the impugned order dated 11.07.2017 passed by the third respondent, insofar as it relates to retention of the petitioner in service to proceed with the disciplinary proceedings, is quashed. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders, settling the retirement benefits of the petitioner, together with interest at the rate of 10% on the gratuity and provident fund, within a period of 6 weeks from the date of receipt of copy of this order.



WEB COPY



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 207

6. The Writ Petition stands thus allowed. No costs. Consequently,
connected Miscellaneous Petition is closed.

14.12.2022

Index:yes/no
Speaking order/non speaking order
ari

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WEB COPY



W.P.No.28669 of 2017
and
W.M.P.No.30846 of 207

M.S.RAMESH, J.

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W.P.No.28669 of 2017
and
W.M.P.No.30846 of 207

14.12.2022