



W.P(MD)No.14367 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14367 of 2022

and

W.M.P.(MD)Nos.10264 and 10268 of 2022

A.Shanmugavel

... Petitioner

Vs

- 1.The Joint Registrar of Cooperative Societies,
O/o. The Joint Registrar of Cooperative Societies,
Virudhunagar Region,
Collectorate Campus,
Virudhunagar.
- 2.The Deputy Registrar of Cooperative Societies,
O/o. The Deputy Registrar of Cooperative Societies,
Aruppukkottai Circle,
Virudhunagar District.
- 3.The Deputy Superintendent of Police,
Commercial Crime Investigation Wing,
Tirunelveli.
- 4.The Inspector of Police,
Commercial Crime Investigation Wing,
Virudhunagar.
(Ref Crime No.2 of 2016)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



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records relating to the impugned order vide R.C.No.1207/2022/Estt (1) dated 30.06.2022 and the consequential impugned order vide R.C.No.1207/2022/Estt (2) dated 30.06.2022 passed by the 1st respondent and quash the same and consequently direct the 1st and 2nd respondents to allow the petitioner to retire from service with effect from the date of superannuation and disburse the retirement benefits payable to the petitioner with interest at the rate of 12 percent till realization within time frame.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.S.Shanmugavel,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was appointed as Junior Inspector in the Department of Cooperation, Food and Consumer Protection on 11.04.1987. He was promoted as Senior Inspector and became a Cooperative Sub-Registrar in the year 2001. He reached the age of superannuation on 30.06.2022. He was not allowed to retire instead he was placed under suspension. Questioning these orders, the present writ petition has been filed.



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3.The learned Additional Government Pleader for the respondents submitted that Crime No.2 of 2016 was registered in connection with misappropriation of funds of Pattamangalam Primary Agricultural Cooperative Credit Society, Virudhunagar District. By a special order, the petitioner was directed to make what is known as 100% verification. In that capacity, he inspected the said Society for one day and issued signed proceedings as if everything is in order. Enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act was conducted and in the said report, the petitioner has been implicated. Therefore, the writ petitioner was suspended from service and also retained in service.

4.I carefully considered the rival contentions and went through the materials on record. As already pointed out, the writ petitioner reached the age of superannuation on 30.06.2022. On the said date, he was suspended from service. In view of the suspension order, he was not allowed to retire but retained in service. Therefore, the primary order that has to be tested is the suspension order.

5.The material recitals in the suspension order are as follows:-

“Whereas in the above stated circumstances of the pending criminal case investigation, it is necessary in the



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public interest to place the said Thiru.A.Shanmugavel, Cooperative Sub-Registrar / Field Officer, Thiruchuli under the control of Deputy Registrar of Cooperative Societies, Aruppukottai under suspension from the Government Service with effect from 30.06.2022 A.N.

Now, therefore, under sub-rule (e) of Rule 17 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, the said Thiru.A.Shanmugavel, Cooperative Sub-Registrar / Field Officer, Thiruchuli under the control of Deputy Registrar of Cooperative Societies, Aruppukottai is with immediate effect, placed under suspension from Government Service until further orders.”

6.Fundamental Rules 56(1)(a) reads that every Government servant in the superior service shall retire from service on the afternoon of the last day of month in which he attains the age of superannuation. Fundamental Rules 56(1) (c) is follows:-

“(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct or allegations of criminal misconduct, is pending; or



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(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial.

*shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.”*

7. In the present case, Fundamental Rule 56(1)(c)(iv) has been invoked.

The learned Additional Government Pleader for the respondents produced the position note regarding the writ petitioner signed by the Deputy Superintendent of Police, Commercial Crime Investigation Wing, Virudhunagar. The said position note concluded that after verification of the records and conducting a thorough investigation, decision regarding inclusion of the petitioner in the criminal case as per the recommendations set out in the report under 81 of Tamil Nadu Cooperative Societies Act would be arrived at.



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8.Since the position note is not quite clear regarding the petitioner's current status, I called upon the Inspecting Official to make a categorical statement if the petitioner is presently figuring as an accused in Crime No.2 of 2016. Mr.K.Nanthakumar, Sub-Inspector of Police, CCIW-CID, Virudhunagar District stated that as on date, the writ petitioner/A.Shanmugavel is not an accused in Crime No.2 of 2016.

9.It is relevant to note here that the aforesaid criminal case was registered way back in September 2016. We are now in September 2022. The investigation officer had not included the writ petitioner as an accused in the said criminal case till date. If the petitioner has been included as an accused, an alteration report would have been filed. An alteration report had not been filed. Therefore, I have to necessarily come to the conclusion that the writ petitioner is not an accused in the criminal case as on date.

10.Now let me take up the relevant Fundamental Rule for consideration. The Government servant will not be allowed to retire from service even if he had reached the age of superannuation, if he is under suspension under any of the four circumstances set out in Fundamental Rules 56(1)(c). The material phrase is “against whom”. It is not enough that the complaint of criminal



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offence is under investigation or trial. The complaint should be against the writ petitioner. Since as on date no such criminal complaint is pending against the writ petitioner, invocation of Fundamental Rules 56(1)(c) will not arise at all.

11. In this view of the matter, the impugned order of suspension as well as the order retaining the petitioner in service are set aside and the writ petition is allowed. The respondents 1 and 2 are directed to permit the petitioner to retire from service with effect from the date of superannuation. His retirement benefits shall also be disbursed. I however make it clear that this order allowing the writ petition will not tie the hands of the investigation officer. If later, the fourth respondent comes across any material, it is always open to him to file an alteration report or even include the writ petitioner in the charge sheet. I have not passed any order regarding the innocence or guilt of the writ petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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To:

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Virudhunagar Region,
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- 2.The Deputy Registrar of Cooperative Societies,
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