



W.P.(MD).No.18605 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.18605 of 2017

and

W.M.P.(MD).No.15000 of 2017

M.Thangaraj

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Madurai Region,
Madurai.

2.The Enquiry Officer/Co-operative Sub-Registrar,
A.294, Madurai-cum-Ramnad District Public Servants,
Co-operative Credit Society,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the first respondent in proceeding Na.Ka.No.4074/2016 Sa Pa (1) dated 28.03.2017 and quash the same.

For Petitioner : Mr.M.Saravana Kumar

For Respondents : Mr.R.Ragavendhran,
Government Advocate.



W.P.(MD).No.18605 of 2017

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ORDER

This Writ Petition is filed to quash the impugned order dated 28.03.2017.

2. The brief facts as stated in the affidavit are that the petitioner was serving in the second respondent Society. After attaining superannuation on 30.06.2015, the petitioner was retired from service. The second respondent has passed an order allowing the petitioner to retire from service vide order dated 30.06.2015. Thereafter, the second respondent was appointed as an Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies Act and enquiry was ordered. Based on the enquiry report, the present impugned order dated 28.03.2017 was passed fixing a liability to the tune of Rs.70,549/-.

3. The contention that was raised by the petitioner is that, having allowed the petitioner to retire from service, the respondents cannot initiate any disciplinary proceedings against the retired employee, because there is no employer employee relationship. The said issue was considered by the Hon'ble Full Bench of this Court in the case of *Andiyannan Vs. The Joint Registrar of*



W.P.(MD).No.18605 of 2017

Co-operative Society reported in 2015 WLR 755, wherein, it is stated that surcharge proceedings cannot be initiated after the retirement of the employee to recover the same from his retirement benefits and the relevant portion is extracted hereunder:

“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”.

4. Following this, the learned Single Judge of this Court has held in the case of *P.Periyasamy Vs. The Deputy Registrar of Co-operative Societies* in *W.P.(MD).No.12784 of 2015* vide order dated 21.07.2017. The relevant portion is extracted hereunder:

“6. I find much force in the contention raised by the learned counsel for the petitioner, because the petitioner had been discharged from service once and for all and there is no relationship existing between the petitioner and the employer as of now. Moreover, a resolution came to be passed on 22.08.2012, permitting the petitioner to retire from service with effect from 02.09.2012. Above all, as per the principles laid down by the Hon'ble Division Bench of



W.P.(MD).No.18605 of 2017

this Court, referred to above, the provisions of Section 87 of the Act can be initiated to recover the loss only as against the employee serving in the Society and not against any retired employee”.

5. Following the above judgments, this Court is of the considered opinion that since the petitioner was already retired from service, there is no employer employee relationship. The respondents also allowed the petitioner to retire from service as early as on 2015 itself. Therefore, the impugned order is liable to be quashed. Hence the impugned order is quashed.

6. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

15.11.2022

Index : Yes / No
Internet : Yes/ No
Nsr



W.P.(MD).No.18605 of 2017

To

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W.P.(MD).No.18605 of 2017

S.SRIMATHY, J.

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W.P.(MD).No.18605 of 2017

15.11.2022