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W.P.No.32850 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21..02..2023

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The Honourable **MR.JUSTICE M.S.RAMESH**

Writ Petition No.32850 of 2016

and

W.M.P.No.28395 of 2016

P.S.Santhanam

..... Petitioner

-Versus-

- 1.The Secretary to Government,
Animal Husbandry, Dairying
and Fisheries Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner of Milk Production
and Dairy Development Department,
Madhavaram Milk Colony,
Chennai – 600 051.
- 3.The Deputy Registrar (Dairying),
Dairy Development Department,
No.15, 4th Street, Gopalapuram,
Gandhi Nagar,
Vellore – 632 006.
- 4.The General Manager,
Vellore/Thiruvannamalai District Cooperative,
Milk Producers' Union Limited,
Arcot Road, Sathuvachary, Vellore – 9.

.... Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the fourth respondent to settle the petitioner's terminal benefits after granting yearly increment from 2009 till his conditional retirement as on 31.10.2014 and duly fixing his pay in the elevated scale of special grade.

For Petitioner(s) : Mr.P.Rajesh

*For Respondent(s) : Mr.T.M.Rajangam,
Govt. Advocate for RR 1 to 3
Mr.L.P.Shanmugasundaram
for R4*

ORDER

When the petitioner herein had reached the age of superannuation on 31.10.2014, he was allowed to retire, however, his retirement benefits have not been disbursed which had prompted him to file the present writ petition seeking for disbursement of retirement benefits.

2. The respondents in the counter affidavit filed have stated that the petitioner had caused a huge loss to the society and the surcharge proceedings under Section 81 of the Tamil Nadu Cooperative Societies Act had also been initiated against him and that the orders have been passed whereby the liability against the petitioner and others were



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proved. As against that surcharge proceedings, the petitioner had filed an appeal before the Principal District Judge, Vellore, in CTA No.08 of 2006 which was allowed on 30.06.2009. The petitioner herein had challenged the same before this court in W.P.No.4462 of 2011. This apart, several other orders under surcharge proceedings have also been passed and the surcharge amount has not been paid owing to which they have not disbursed the retirement benefits.

3. The issue was to whether, the authorities under the Co-operative Societies Act are empowered to continue the disciplinary proceedings of their employees after their retirement, came up for consideration before the Hon'ble Full Bench of this Court in the case of **S.Andiyannan & another Vs. The Joint Registrar of Co-operative Societies & others** reported in 2015 (4) CTC 1 and it was categorically held therein that the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act cannot be proceeded with against a retired employee. The relevant portion of the order of the Hon'ble Full Bench reads as follows:-

"27. A bare reading of the said Section would show that it relates to recovery of the amount from any employee or any other person who has caused financial loss to the co-operative society. It is



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not in dispute that the term "surcharge" need not necessarily related to punishment being imposed on the employee. As contended by the learned counsel appearing for the petitioners, the scope of Section 87 of the Act pertaining to surcharge is to recover the amount from the person, who caused loss to the cooperative society. In the light of the decisions rendered by the Hon'ble Apex Court, it is clear that Section 87 of the Act could not be construed as an enabling provision to the authorities to continue or extent the departmental proceeding after the retirement of an employee. It is well settled in various decisions of the Hon'ble Supreme Court that if the loss caused by any employee is established, in the manner known to law, the employer / cooperative society can recover the amount, by way of surcharge with or without interest, however, surcharge proceeding cannot be initiated against any retired employee.

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



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benefits.

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



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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 proceeding, 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 proceeding after the retirement of the employee."

4. Thus, by quoting the proceedings under Section 81 and the orders passed under Section 87 of the Tamil Nadu Cooperative Societies Act, the respondents are not justified in withholding the petitioner's gratuity and other retirement benefits. In view of the same, the petitioner would be entitled for payment of interest at the rate of 10% p.a. on the outstanding retirement benefits in accordance with the provisions of the Payment of Gratuity Act.

5. In the light of the above findings, there shall be a direction to the respondents herein to forthwith disburse the retirement benefits of the petitioner together with interest @ 10% p.a. from the date of his retirement till date of actual disbursement within a period of four weeks



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from the date of receipt of a copy of this order. This writ petition stands allowed accordingly with the above directions. No costs. Consequently connected miscellaneous petition stands closed.

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Index : yes / no
Neutral Citation : yes / no
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M.S.RAMESH.J.,

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