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W.P.No.22095 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.22095 of 2023

&

W.M.P.Nos.21492 and 21493 of 2023

K.Ravichandran

... Petitioner

Vs.

The Joint Registrar of Cooperative Societies
Managing Director
Villupuram District Central Cooperative Bank
No.2. Hospital Road, Villupuram
Villupuram District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the respondent in her proceedings Na.Ka.No.E1/133/2023 dated 31.05.2023 and quash the same and consequently direct the respondent to disburse the petitioner retirement benefits like gratuity, encashment of earned leave and unearned leave on private affairs to the petitioner.

For Petitioner : Mr.C.Prakasam



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For Respondent : Mr.R.Arumugam

ORDER

The petitioner was originally appointed as sub-staff in the Cuddalore District Central Cooperative Bank and after various promotions, he became a Manager in the year 2013. When he was due to retire on 31.05.2023, the present impugned order has been passed, preventing him from retiring from service. This order is put under challenge in the writ petition.

2. The learned counsel for the petitioner submitted that the reason for which he has not been permitted to retire is owing to the allegation that the petitioner failed to recover certain loan amounts which pertains to the period from 20.11.2009 to 06.03.2013, 13.07.2017 to 17.05.2022, 08.03.2016 to 12.07.2017. In view of the delay in initiating action for such alleged lapses, learned counsel for the petitioner would submit that the contemplated action cannot be sustained.

3. Per contra, learned counsel appearing for the respondent submitted that lapses on the part of the petitioner came to light only in the year 2023 and therefore, they had immediately passed the impugned



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order and thereafter three show cause notices were issued on 18.05.2023 and on 29.05.2023.

4. The learned counsel appearing for the respondent submitted that a direction may be issued to the petitioner to submit his explanation to the show-cause notices and thereafter, they would complete the proceedings expeditiously.

5. Admittedly, the lapses of having failed to recover the loan amounts relates to the period from 2009 to 2022. In the show-cause notice dated 18.05.2023, the alleged lapse is for the period from 08.03.2016 to 12.07.2017, when the petitioner was working in Dindivanam branch. In another show-cause notice dated 18.05.2023, the period between 20.11.2009 to 06.03.2013 has been quoted as the lapse period when the petitioner was working in Vanoor branch. The period between 13.07.2017 to 17.05.2022 relates to Marakanam branch. Apparently, for the alleged lapses, which relates to the year 2009 onwards, the respondent had waited for almost 14 years to initiate further action against the petitioner. Such delayed action, thereby preventing an employee from retiring from services on the last of date of his retirement has been frowned upon by this Court in various decisions. The



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Government had taken note of such decisions and has passed G.O.Ms.No.111, Human Resources Management (N) Department, dated 11.10.2021, fixing certain time limits for such action for any irregularity committed by a Government servant. As per the said Government Order, to avoid suspension on the date of retirement of the Government employee, a decision should be taken well in advance i.e., three months prior to the date of retirement on superannuation. The Government Order further states that any failure on the part of Disciplinary Authority to issue such orders three months before the date of retirement of an Officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government servant concerned.

6. In this case, the allegations made against the petitioner is one of dereliction of duty from 2009 onwards. In the impugned order, no reference has been made as to why there was such an inordinate delay in initiating an action against an employee who was due to retire on the date on which the order was passed. This Court in the case of ***R.Gnanasekhar Vs. State of Tamil Nadu and another*** in W.P.No.01.02.2023 vide order dated 01.02.2023 had summed up various



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decisions rendered by Hon'ble Supreme Court as well as this Court and had come to a conclusion that an inordinate delay in commencing the proceedings will cause serious prejudice to the concerned employee and therefore held that such belated proceedings are illegal. Following are the decisions rendered in the said case:

'9. Secondly, the Hon'ble Supreme Court, as well as this Court, in various cases have held that inordinate delay in initiation of the departmental proceedings, as well as the conclusion of the same, would be fatal to the respondents. In service jurisprudence, the Enquiry Officer is required to complete the departmental proceedings, within a reasonable time, after following the due procedure of law and by abiding with the principles of natural justice. In cases where there is an undue delay in completion of the departmental proceedings, it has been held in various decisions that the laches on the part of the employer in completing the departmental enquiry, would be fatal.

*10. In the **Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy** reported in 2005 (5) CTC 451, the Division Bench of this Court held as follows:*

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view



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to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant failed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

11. In yet another decision in ***R.Tirupathy and others v. the District Collector, Madurai District and others reported in 2006 (2) CTC 574***, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994-95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

12. The Supreme Court in ***M.V.Bijlani v. Union of India and other reported in 2006 (5) SCC 88***, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

13. In ***M.Elangovan v. The Trichy District Central Co-***



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operative Bank Ltd., reported in 2006 (2) CTC 635, this Court, while quashing the second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in *Parameswaran v. State of Tamil Nadu reported in 2006 (1) CTC 476.*”

7. In line with the aforesaid decision, the Government has passed G.O.Ms.No.111, Human Resources Management (N) Department, dated 11.10.2021 fixing up a time limit of three months for initiation of such Departmental action and to avoid suspension or preventing the employee from retiring from his services on the last date of his age of superannuation. Thus, the inaction on the part of the respondent to initiate proceedings immediately or in the alternative atleast three months prior to the petitioner's age of superannuation would be impermissible in law.

8. Accordingly, the writ petition is allowed and impugned order passed by the respondent dated 31.05.2023 bearing reference proceedings Na.Ka.No.E1/133/2023 is set aside. Consequently, three show-cause notices dated 18.05.2023 and 29.05.2023 are set aside and



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there shall be a direction to the respondent herein to forthwith pass orders permitting the petitioner to retire from service with effect from 31.05.2023 and thereby disburse all the retirement and monetary benefits. Such order shall be passed within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

06.11.2023

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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To

The Joint Registrar of Cooperative Societies
Managing Director
Villupuram District Central Cooperative Bank
No.2. Hospital Road, Villupuram
Villupuram District



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M.S.RAMESH,J.

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