



W.P.(MD)No.2602 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2602 of 2009

S.Andiyannan

... Petitioner

vs.

1.The Joint Registrar,
Cooperative Societies,
Madurai Region, Madurai.

2.The Special Officer/ Joint Registrar,
R.K.10, Virudhunagar District
Central Cooperative Bank Limited,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 1st respondent in Revision Petition No.5 of 2006 Sa Pa, dated 07.01.2009 and to quash the same and consequently, to direct the 2nd respondent to return back the amount



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recovered from the retirement benefit and the gratuity of Rs.36844/- and Rs.17116/- respectively with the reasonable interest.

For Petitioner	: Mr.T.A.Ebenezer
For R1	: Mr.R.Ragavendran Government Advocate
For R2	: Mr.D.Shanmugaraja Sethupathi

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the order dated 07.01.2009 of the 1st respondent and consequently, to direct the 2nd respondent to return back the amount recovered from the retirement benefit and the gratuity of Rs.36,844/- and Rs.17,116/- respectively with the reasonable interest.

2. The petitioner was working as Manager in the 2nd respondent Bank and was suspended on 27.03.2002 and the petitioner retired on attaining superannuation on 31.03.2002. The respondents initiated the



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disciplinary proceedings on the charge of misappropriation. Pending disciplinary proceedings, the petitioner has attained superannuation. The respondents have not passed any separate order to retain the petitioner in the service. Therefore, the contention of the petitioner is that the respondents cannot proceed with the disciplinary proceedings. The charge against the petitioner is that while he was working in Ramanathapuram District, Central Cooperative Bank, he was having a supervisory power and certain financial irregularities were detected while disbursing the loan amount. The petitioner had conspired with four other employees and misappropriated Rs.36,844/-.

3. The contention of the petitioner is that the disciplinary proceeding was initiated on 19.06.2001. In the meantime, he has approached the Madras High Court to expedite the enquiry and has obtained orders in W.P.Nos.2581 of 2005 and 3636 of 2005. The



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departmental proceedings completed on 27.05.2006 by imposing punishment of recovery of one year increment from the retirement benefit and a recovery of Rs.36,884/- from the gratuity, vide proceedings, dated 27.05.2006. The petitioner filed a revision petition under Section 153 in Revision Petition No.5 of 2006 and the 1st respondent dismissed the revision petition and confirmed the punishment imposed by the 2nd respondent, vide order, dated 07.01.2009. Aggrieved over the same, the present writ petition is filed.

4. The 2nd respondent has filed counter affidavit stating that the petitioner in connivance of four persons had committed the offence of falsification of accounts and misappropriation while granting loan to the members for procuring cows and bullock cart, hence, a charge memo, dated 19.06.2001, was issued. Subsequently, a revised charge memo, dated 22.11.2001, was issued wherein the documents and witnesses



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relied on by the management for the enquiry was listed. The petitioner submitted an explanation on 11.12.2001 and an enquiry officer was appointed on 25.02.2002, but the enquiry officer was changed since the earlier enquiry officer retired from service. In the meanwhile, the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Ramanathapuram requested the enquiry officer to stop the disciplinary proceedings, vide letters, dated 22.04.2002 and 20.12.2002, stating that the Government Officials are also involved and entire documents relating to the case was handed over to the Director of Animal Husbandry, Chennai. Since the four Departmental Officials were involved in the scam, the Deputy Superintendent of Police, Vigilance and Anti-Corruption requested the Joint Registrar of Cooperative Societies to hold common enquiry. Since elaborate enquiry is necessary and four departments are involved in this case, the enquiry took time. Finally, the 2nd respondent passed the order, dated 27.05.2006. Therefore, nothing is



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irregular in this present matter. Hence, the respondents prayed to dismiss the writ petition with exemplary cost.

5.Heard Mr.T.A.Ebenezer, learned Counsel appearing for the petitioner, Mr.R.Ragavendran, learned Government Advocate appearing for the 1st respondent and Mr.D.Shanmugaraja Sethupathi, learned Counsel appearing for the 2nd respondent and perused the records.

6. After hearing the rival submissions, this Court has anxiously considered the issue. The learned Counsel for the petitioner as well as the respondents fairly submitted that the issue whether after superannuation the employer can proceed with the disciplinary proceeding is decided by the Hon'ble Full Bench of this Court in W.P. (MD)Nos.2602 of 2009 and 12007 of 2011, dated 27.03.2015, wherein it has been held as under:



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“30. Answer to the first question referred to this Bench:

Under the Tamil Nadu Cooperative 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.

31. Answer to the second question referred to this Bench:

As contemplated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, the term 'surcharge' is not penal in nature, hence if there is admission with regard to the loss caused by the employee or the same is established by the cooperative institution, based on the proceeding already initiated for surcharge, the same could be recovered in the manner known to law. However, the provision relating to surcharge under Section



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87 of the Act is not impliedly empowering the disciplinary authority to continue any disciplinary proceeding against an employee, who retired from service, in the absence of any Service Rules or Bye-law. Hence, Section 87 of the said Act cannot be construed as an enabling provision or impliedly empowering provision to the employer to continue any disciplinary proceeding after the retirement of any employee, in the absence of any Service Rules.”

7. In the present case, there is no special by-laws or special service rules dealing with the case of the petitioner. Moreover, the respondents have not passed any separate orders retaining the petitioner in service, in order to complete the disciplinary proceedings. On attaining superannuation, the respondents and petitioner is not having any employer employee relationship. Therefore, the petitioner is right in claiming that the disciplinary proceedings cannot be further proceeded with. Therefore, this Court is of the considered opinion that the as rightly



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stated by the petitioner and confirmed by the Hon'ble Full Bench of this Court, the respondents have no power to continue the disciplinary proceedings after the superannuation of the petitioner. Further the petitioner was not retained in service to complete the disciplinary proceedings.

8. However, the respondents are having power to initiate the surcharge proceedings. But the same will not empower the respondents to continue the disciplinary proceeding after the retirement of any employee, in the absence of any Service Rules. Therefore, the impugned punishment order which was confirmed by the revision authority is against the judgment rendered by the Hon'ble Full Bench and hence the punishment order cannot be sustained in law. Hence, the same is quashed and the respondents are directed to pay the amount deducted from the petitioner. As far as interest is concerned the petitioner is



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entitled to interest at the rate of 7% pa from 27.03.2015 (the date of Hon'ble Full Bench judgment). The direction stated above shall be complied within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is allowed.

No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Tmg

06.06.2023
(1/2)

To

The Joint Registrar,
Cooperative Societies,
Madurai Region, Madurai.



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S.SRIMATHY, J

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