BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.12007 of 2011

M.Palanivel ... Petitioner

vs.

1.The Joint Registrar of Co-operative Societies,
Thanjavur.

2.The Special Officer,
Kumbakonam Central Co-operative Bank
Limited, Kumbakonam. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 1st respondent to issue suitable direction to the 2nd respondent to pay all the retirement benefits including leave salary, which is due to the petitioner forthwith with interest from the date of retirement till realization.

For Petitioner : Mr.C.Jegannathan
for M/s.Veera Associates

For R1 : Mr.R.Ragavendran
Government Advocate

O R D E R

This writ petition is filed for issuance of a writ of Mandamus, to direct the 1st respondent to issue suitable direction to the 2nd respondent to pay all the retirement benefits including leave salary, which is due to the petitioner forthwith with interest from the date of retirement till realization.

2. The petitioner joined on 27.09.1977 and attained superannuation on 31.05.2011 after completing 34 years of service. At the time of retirement, he was working as Manager under the 2nd respondent. The petitioner was allowed to retire from service by the respondents, through proceedings, dated 31.05.2011. However, the respondents have not paid the retirement benefits and other statutory claims. The petitioner submitted a requisition to the 2nd respondent seeking the said benefits on 02.09.2011. Since the same was not paid, the petitioner is before this

Court.

3. The 1st respondent has filed counter affidavit stating that the petitioner had attained superannuation on 31.05.2011 in the cadre of Manager of Kollidam Branch. While the internal audit of the Bank was conducted, it was directed to verify the said Bank accounts and to submit the report. On 17.05.2011, the details of the internal audit were intimated to the petitioner to render assistance to verify the loan accounts. After verification of the Bank accounts, vide report, dated 20.05.2011, of the internal auditor, it was seen that serious financial lapses have been committed by the petitioner in the said Kollidam Branch of the respondent Bank. The petitioner failed to recover the term deferred loans which led to the loss of Rs.1,92,057/- to the Bank and the details of the said liability is extracted hereunder:

I.Kollidam Branch
Women Micro Credit Loan - 4581/-

Joint Liability Groups Loans	-	*6727/-*
NH-F.D.C. Loans	-	*2854/-*
Self Help Group Loans	-	*162391/-*
II.Sugar Mill Branch		
Joint Liability Group Loans	-	*15534/-*
Total	-	*192057/-*

4. Thereafter, a notice, dated 30.05.2011, was sent to the petitioner to set right the above said loss. Subsequently notices were also sent on 11.07.2011. In order to recover the above said loans from the persons responsible, the internal auditor was also directed, vide letter, dated 04.08.2011, confirming the revenue loss of Rs.1,92,057/- as principal amount with the accrued interest thereon and also the lapses committed by the petitioner. Hence, the recovery proceedings were initiated to recover the said amount from the petitioner.

5. The petitioner is entitled to terminal benefits and the following benefits was already paid as under:

S.No.	Details	Amount	Date of payment
1.	E.P.F.	208676/-	31.05.2011
2.	Gratuity	821512/-	17.08.2011

The petitioner is eligible for Encashment of Earned Leave and an amount of Rs.3,21,916/- is lying on his credit. The revenue loss caused by the petitioner to the Bank is Rs.1,92,057/-. Pending recovery of the above said loss, the encashment of earned leave of the petitioner was withheld. As stated supra except for this other terminal benefit were disbursed. The petitioner has not approached this Court with clean hands and the petitioner cannot file this writ petition, since it is against the dictum laid down in ***Marappan's*** case. Hence, the 1st respondent prayed to dismiss the writ petition.

6. Heard Mr.C.Jegannathan, learned Counsel appearing for the petitioner and Mr.R.Ragavendran, learned Government Advocate appearing for the 1st respondent and perused the records.

7. The contention of the petitioner is that in spite of retirement, the respondents have not paid the retirement benefits. The respondents refuted the said contention by stating that based on the audit report, the petitioner has caused loss to the Bank to the tune of Rs.1,92,057/-. Therefore, the Bank is entitled to recover the said amount from the petitioner.

8. It is seen from the records that the respondents have not initiated any surcharge proceedings to recover the loss but straight away deducted the amount from terminal benefits of the petitioner. Therefore, this Court is of the considered opinion that the respondents has violated the

principles of natural justice. Even if there is audit objection then the respondents ought to have issued notice, call for objections, then conduct enquiry, thereafter ought to have taken steps to recover based on the outcome of the enquiry. The respondents have not followed the principles of natural justice, simply based on audit objection the respondents are not empowered to recover the amount.

9. Moreover, the allegation is not misappropriation but the petitioner has failed to collect the loans. This Court is of the considered opinion that even if the petitioner has committed or failed to recover the default loans, the respondents have power to recover the same or initiate proceedings as per law. Therefore, the respondents ought not to have withheld the petitioner's terminal benefits.

10. It is seen that the petitioner was on the verge of superannuation

on 31.05.2011, the respondents have issued notice on 30.05.2011 (that a day before the retirement) and then again issued notice on 11.07.2011 to recover the loss. 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:

> *"30. Answer to the first question referred to this Bench:*
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> *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 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."

11. 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 or recovery proceedings. On attaining superannuation, the respondents and petitioner is not having any employer employee relationship. Therefore, the petitioner is right in claiming that the recovery proceedings cannot be further proceeded with. Therefore, this Court is of the considered opinion that the as rightly stated by the petitioner and confirmed by the Hon'ble Full Bench of this Court, the respondents have no power to continue the proceedings after the superannuation of the petitioner. Further the petitioner was not retained in service to initiate any disciplinary proceedings.

12. 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 respondents are not empowered to retain the terminal benefits of the petitioner.

13. It is seen from the counter affidavit that the respondents have paid all the terminal benefits except the leave encashment amount alone. But the learned Counsel for the petitioner submitted that the petitioner has not received any amount from the respondents. Therefore, this Court is directing the respondents to pay the encashment of earned leave which was withheld within a period of four weeks from the date of receipt of a copy of this order. As far as interest is concerned the petitioner is entitled to interest at the rate of 7% per annum from 27.03.2015 (the date of Hon’ble Full Bench judgment).

14. If the respondents have not paid any other terminal benefits, the same shall be paid without fail. With the above said observation, the writ petition is allowed. No costs.

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

06.06.2023
(2/2)

To

The Joint Registrar of Co-operative Societies,
Thanjavur.

S.SRIMATHY, J

Tmg

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