



W.A.(MD) No.1349 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1349 of 2023
and
C.M.P.(MD)No.10233 of 2023**

The President,
O.702, Panthapuli Primary Agricultural,
Co-operative Credit Society,
P.Reddiyapatti, Karivalamvanthanallur Via,
Sankarankovil Taluk,
Tenkasi District.

... Appellant/3rd Respondent

-vs-

1.V.Palanivel ... 1st respondent/writ petitioner

2.The Joint Registrar of Co-operative Societies/
Common Cadre Authority,
O/o. Joint Registrar of Co-operative Societies,
Tirunelveli Region, Tirunelveli.

3.The Deputy Registrar of Co-operative Societies,
O/o. Deputy Registrar of Co-operative Societies,
Tirunelveli Circle, Tirunelveli.

... Respondents 2 & 3/Respondents 1 & 2

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 27.04.2023 made in W.P.(MD)No.24384 of 2022 on the file of this Court.



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For Appellants : Mr.S.Kumar

For Respondents : Mr.D.Shanmugaraja Sethupathi for R1

: Mr.J.Ashok
Additional Government Pleader for R2 & R3

JUDGMENT

[Order of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This writ appeal is filed by the appellant, the Co-operative Society aggrieved by the order of the learned Single Judge dated 27.04.2023 made in W.P.(MD)No.24384 of 2022. The writ petition was filed by the first respondent herein challenging the order permitting him to retire dated 30.06.2022 inasmuch as it imposed condition for postponement of payment of all the retiral benefits until the completion of enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and further proceedings being taken. There was also other condition to obtain an affidavit of undertaking in view of Section 81 enquiry being proceeded in the matter.

2. The first respondent was working as a Secretary in the appellant's Society having been appointed with effect from 12.07.1989. Upon attaining the age of superannuation at the age of 60 years, he was sought to be retired from



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service with effect from 30.06.2022. As a matter of fact, the appellant Society had completed the audit for the year 2020-2021 and there was no irregularity fixed on the first respondent/petitioner. The appellant Society had passed a resolution on 02.06.2022 to permit the first respondent/petitioner to retire from service. Thereafter, on the said resolution, the second respondent passed the order impugned in the writ petition dated 30.06.2022 while permitting the first respondent to retire from service, imposed a condition to disburse the retirement benefits only after the completion of the pending enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. It is seen that the said enquiry has been ordered in respect of the loans disbursed to the various beneficiaries. As on date of superannuation, there is no disciplinary proceedings, surcharge proceedings or criminal prosecution whatsoever which is pending as against the first respondent. Therefore, challenging the authority of the second respondent/Joint Registrar of Co-operative Societies to impose such conditions, the writ petition was filed.

3. The writ petition was resisted by the first respondent by filing a counter affidavit that a day prior to the retirement of the first respondent, that is, on 29.06.2022 an enquiry in respect of the crop loans sanctioned and disbursed by the appellant Society has been ordered. It is stated that the



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person can be placed under suspension if only any grave charges or criminal case is pending against him as on date of retirement and therefore, such a condition was imposed in the order permitting him to retire. It is the further case of the appellant herein that the first respondent seems to have committed irregularities and therefore, in the public interest for the recovery of the financial deficiency, the impugned order is passed.

4. The learned Single Judge considered the case of the parties and considered the fact that when the first respondent belong to the common cadre and when there is no provision in the rules for imposing such an order of withholding of all the service benefits, the conditions cannot be sustained and accordingly, allowed the writ petition. Eventhough the order is passed by the Joint Registrar of Co-operative Societies and eventhough the appellant Society had originally passed the resolution recommending the retirement of the first respondent, the appellant Society had only filed the present appeal.

5. Even otherwise, when the first respondent belong to common cadre, whether to permit him to retire or to suspend him from service and retain him upon the age of superannuation are all governed by statutory Rules. Therefore, it is open for the respondents 2 and 3 if permissible under the



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Rules to suspend the first respondent and retain him from service. Once he is permitted to retire, then as per the statutory Rules, all the retiral benefits have to be paid by the appellant Society. The action of the second respondent/Joint Registrar of Co-operative Societies, in permitting the first respondent to retire and at the same time practically holding otherwise that none of the retiral benefits should be paid to him, is a colourable exercise of power. If the authority cannot directly place the employee under suspension or retain him in service for the mere pending of an inquiry under Section 81, the same cannot be done indirectly by imposing conditions which would virtually amount to undoing his permission to retire.

6. When there is no provision in the statutory Rules to impose such a condition, no exception whatsoever can be taken to the order of the learned Single Judge allowing the writ petition. Accordingly, finding no merits, this Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

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NCC : Yes / No
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Internet : Yes / No
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S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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