BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.08.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.16786 of 2023
and
W.M.P(MD)No.14014 of 2023

K.Sadaiyappan ... Petitioner

Vs.

1.The Registrar of Co-operative Societies,
Nvn Malaigai,
170, EVR Periyar High Road,
Kilpauk,
Chennai 10.

2.The Regional Joint Registrar of Co-Operative Societies,
Thanjavur Region,
Thanjavur District.

3.The Regional Circle Deputy Registrar of Co-Operative Societies,
Pattukottai,
Thanjavur District.

4.The Managing Director Cooperative Urban Bank,
Pattukottai,
Pattukottai Taluk,
Thanjavur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order issued by the second respondent in Na.Ka.No.4554/2022/KA dated 30.06.2022 and quash the same in so far as conditional retirement i.e. allowing the petitioner to retire from service without prejudice to pending surcharge proceedings in Na.Ka.No. 1214/2019 Sa Pa dated 30.05.2019 and consequently directing the respondents to pay the Death Cum Retirement benefits, encashment of earned leave and other monetary benefits more fully regular pension within the time stipulated by this Court.

For Petitioner	: Mr.Sricharan Rangaraj Senior Counsel for Mr.C.Jeganathan
For RR 1 to 3	: Mr.N.Muthuvijayan Special Government Pleader

ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order issued by the second respondent dated 30.06.2022 insofar as conditional retirement i.e. allowing the petitioner to retire from service without prejudice to pending surcharge proceedings dated 30.05.2019 and consequently directing the respondents to pay the

Death cum Retirement benefits, encashment of earned leave and other monetary benefits more fully regular pension within the time stipulated by this Court.

2.The petitioner was originally appointed as Junior Inspector of Co-operative Societies through employment exchange on 16.12.1985. After various promotions, he was posted as Managing Director in the fourth respondent Society. While so, on 12.10.2018, the third respondent initiated proceedings as against the petitioner under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 with regard to the alleged shortfall caused due to the belated sale of loan default jewelry by auction. An enquiry officer was appointed and a report was submitted by the enquiry officer on 15.04.2019 to the third respondent recommending to take disciplinary action as well as surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 against the petitioner and others. However, the enquiry officer did not recommend for any criminal action. On the basis of which, the third respondent issued a show cause notice on 30.05.2019 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 to the petitioner and five others. In the meanwhile, one Rajakarani, who was also implicated in the aforesaid report of the enquiry officer, who worked as Co-operative Sub-Registrar / Managing Director in the third respondent Society challenged the said show cause notice dated 30.05.2019 before this Court in W.P.(MD)No.16351 of 2019, in which, this Court was pleased to grant an order of interim stay, following which, the same was allowed by this Court on 04.01.2023. While so, the petitioner attained his age of superannuation on 30.06.2022. The same day, the second respondent vide proceedings in Na.Ka.No.455/2022/KA, dated 30.06.2022, allowed the petitioner to retire from service, without prejudice to the surcharge proceedings and the pending Writ Petition filed by Rajakarani, on the petitioner attaining the age of superannuation on 30.06.2022. Even though the petitioner was allowed to retire from service by the second respondent, the entire retirement benefits of the petitioner were withheld by the respondents. This Hon'ble Apex Court as well as this Court in a number of decisions has already held that as a matter of fact that the Fundamental Rule 56(1)(c) would apply only to the cases of misconduct of grave charges or a complaint of criminal investigation is under trial. These exemptions under the Fundamental Rule FR 56(1)(c) do not include the surcharge proceedings and hence, the petitioner is absolutely entitled to payment of retiral benefits. Therefore, the petitioner challenged the proceedings of the second respondent in Na.Ka.No. 4554/2022/KA, dated 30.06.2022, by which the petitioner was allowed to retire from service on a specific condition i.e., without prejudice to the pending surcharge proceedings and the pending Writ Petition of Rajakarani. Assailing the same, this Writ Petition came to be filed.

3.Heard the learned senior counsel appearing for the petitioner, who took me through each and every point substantiated in his affidavit and the learned Special Government Pleader appearing for the respondents, who reiterated each and every defence which has been putforth in his counter-affidavit and I anxiously perused the entire materials available on record.

4.The petitioner was deputed as the Managing Director of the fourth respondent Society at Pattukkottai, Thanjavur District during the period 26.03.2016 to 30.05.2019 and from 04.06.2016 to 22.06.2016, he was functioning with an additional charge as Co-operative Sub-Registrar and Managing Director. In the meanwhile, he succumbed to a heart disease. As a result of which, during the period 14.09.2016 to 17.12.2017, he underwent open heart surgery and was on medical leave. While so, on 12.10.2018, the third respondent initiated proceedings as against the petitioner under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 with respect to the shortfall caused due to the belated sale of loan default jewelry by auction during the period 30.05.2015 to 30.11.2017. That apart, the auction of the said jewelry was made at a lower rate than the rate fixed by appraiser. An enquiry officer was appointed and a report was submitted by the enquiry officer on 15.04.2019 to the third respondent recommending to take disciplinary action as well as surcharge proceedings against the petitioner and others. However, the enquiry officer did not recommend for any criminal action. On 27.05.2019, a charge-memo was issued by the third respondent to the petitioner under Section 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules. While so, the third respondent issued a show-cause notice on 30.05.2019 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 to the petitioner and five others. One Rajakarani, who served as the Co-operative Sub-Registrar / Managing Director of the third respondent, was one among five others. In the meanwhile, the said Rajakarani, challenged the show-cause notice dated 30.05.2019 before this Court in W.P(MD)No.16351 of 2019 and this Court granted an order of interim stay.

5.The petitioner submitted his explanation to the show-cause notice dated 30.05.2019 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 and a final order was passed in the disciplinary proceedings as against the petitioner by the second respondent in R.C.No.3995/2019/A, dated 04.08.2020 imposing punishment of stoppage of increment for a period of eight months. In the meanwhile, the petitioner attained the age of superannuation on 30.06.2022. Hence, vide proceedings in Na.Ka.No.4554/2020/KA, dated 30.06.2022, the second respondent issued an order allowing the petitioner to retire from service without prejudice to the surcharge proceedings, dated 30.05.2019 and the pending Writ Petition of Rajakarani. Challenging the conditional retirement impugned order, dated 30.06.2022, the petitioner has filed this Writ Petition.

6.In view of the said impugned order, dated 30.06.2022, the entire terminal benefits of the petitioner have been withheld by the respondents and has not been disbursed so far. Though the petitioner made a representation on 11.11.2022 to the respondents seeking disbursal of his retirement benefits and regular pension, that was not considered by the respondents and has been kept in abeyance so far. This Court in the Writ Petition in W.P(MD)No.16351 of 2019 filed by the said Rajakarani, who is one among six delinquents in the surcharge proceedings initiated by the third respondent on 30.05.2019, has passed a final order on 04.01.2023, allowing the said Rajakarani to obtain her terminal and pension benefits and the relevant portion of which is extracted as follows:-

> *"9.Hence, this Court is inclined to quash the disciplinary proceedings which was initiated by issuing the charge memo, dated 27.05.2019, which is challenged in W.P(MD)No.16364 of 2019. As far as the surcharge proceedings is concerned has rightly pointed out by the respondents, it has to challenge through Civil Miscellaneous Appeal before the Tribunal.*
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> *10. On perusing the surcharge proceedings, it is seen that the petitioner along with five other employees of the Society have caused loss to the tune of Rs.2,91,500/-. The petitioner was shown as one of the employee. Even, if it is taken the alleged loss of the society is to the tune of Rs.2,91500/-, the petitioner share would be Rs.58,300/-. Therefore, this Court is inclined to allow the writ petition in W.P(MD)No.16351 of 2019.*
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> *11. As far as the impugned surcharge proceedings is concerned, the respondents shall proceed further. However, the petitioner is entitled to all the terminal benefits applicable to the petitioner on*

> *attaining retirement. The respondents are at liberty to deduct a sum of Rs.58,300/-and retain the said amount until completion of the surcharge proceedings. The respondents are further directed to keep the said amount without any interest in recurring deposit, in any one of the Nationalised Bank."*

7.However, in the case of the petitioner, the disciplinary proceeding has already been concluded as against him by the second respondent vide order, dated 04.08.2020, where already a punishment of stoppage of increment for a period of eight months has been implemented as against the petitioner. Even thereafter the implementation of the said order on 04.08.2020, the petitioner had served till 30.06.2022 ie., the date of his superannuation. From the above observation, it can be understood that the punishment imposed by the second respondent on 04.08.2020 was completed after a period of eight months and ought to have been completed by 30.04.2021 and the petitioner had served for a period of one year and two months thereafter.

8.The third respondent has filed a counter-affidavit and categorically stated that the petitioner and five others are jointly and severally liable on two counts for the alleged loss of Rs.2,91,500/- and Rs.16,25,369/- respectively for the shortfall caused due to the belated sale of loan default jewelry by auction to a lower rate than the rate fixed by appraiser. No doubt, the surcharge proceedings are independent in nature and do not depend on the service of the petitioner. Surcharge proceedings are species of recovery proceedings and are not judicial proceedings which would have any effect on the conduct or the service of an employee.

9.It is no more *res integra* that after attaining the age of superannuation in the absence of any service Rules or bye-laws, it is not open to the Co-operative Society concerned to continue any disciplinary proceedings. The petitioner being a Co-operative employee is governed by the mandates of the Tamil Nadu Co-operative Societies Act, 1983 and the bye-laws of the Co-operative Urban Bank, Pattukottai. Neither the Tamil Nadu Co-operative Societies Act nor the bye-laws of the Co-operative Urban Bank provide for retaining an employee, who has attained the age of superannuation, in service. Thus, the respondents have no authority to pass an order of conditional retirement when the disciplinary proceedings initiated as against the petitioner have already been concluded on 04.08.2020 and when there is no criminal proceeding pending as against the petitioner with respect to the alleged allegations on the basis of which surcharge proceeding has been initiated. When the respondents have deemed it fit not to suspend the petitioner, they ought to have permitted him to retire completely and not conditionally on the basis of the pendency of the surcharge proceedings. In the absence of any specific provision of law empowering the respondents to retain the Government servants in service, the respondents ought to have permitted him to retire and hence, the impugned order of the conditional retirement passed by the second respondent, dated 30.06.2022 is *per se* illegal.

10.Section 78 of the Tamil Nadu Co-operative Societies Act, 1983 defines the Provident Fund and the same is extracted as follows:-

> *"78. Provident Fund . __ (1) A registered society not being an establishment to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) applies, may establish a Provident Fund for the benefit of its employees to which shall be credited all*

contributions made by the employees and the society in accordance with the by-laws.

(2) A Provident Fund established by a registered society under sub - section (1) shall be invested in the financing bank, but shall not __

(a) be used in the business of the society;

(b) form part of the assets of the society;

(c) be liable to attachment or be subject to any other process of any court or other authority."

11.Likewise, Section 79 of the Tamil Nadu Co-operative Societies Act, 1983 defines the Gratuity Fund and the same is extracted as follows:-

"79. Gratuity Fund .__ (1) A registered society not being an establishment to which the Payment of Gratuity Act, 1972 (Central Act 39 of 1972) applies, may provide in its by-laws for payment of gratuity to the employees at such rates and on such conditions as may be specified in the by-laws and such society may establish a Gratuity Fund or make other arrangements for the purpose.

(2) A Gratuity Fund, if any, established by a registered society under sub - section (1) shall be invested in the financing bank, but shall not__

(a) be used in the business of the society;

(b) form part of the assets of the society;

(c) be liable to attachment or be subject to any other process of any court or other authority."

12.In terms of Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983, neither the Provident Fund nor the Gratuity of the petitioner is liable to attachment or could be subjected to any other process of any Court or other authority and this has been already confirmed by the order passed by this Court in the case of the ***Registrar of Co-operative Societies and others Vs. A.Sengodan*** reported in ***2019 SCC Online Mad 9298***. Having passed an order permitting the petitioner to retire from service, withholding of pension and terminal benefits of the petitioner by the respondents would be meaningless. It is a settled law that pension and gratuity are not bounties but is a "property" within the meaning of Article 300A of the Constitution as held in the case of ***State of Jarkhand and others Vs. Jitendra Kumar Srivastava and another*** reported in ***2013 (12) SCC 210***. Thus a person cannot be deprived of such right without following due process of law.

13.In the case in hand, though surcharge proceedings were initiated, no final order was passed in the same on the date of superannuation of the petitioner.

14.Rule 8 of the Tamil Nadu Pension Rules, 1978, in sub-Clause (1)(b) mandates that the pension sanctioning authority may by order in writing to withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the petitioner is convicted of a serious crime or is found guilty of grave misconduct.

15.However, in this case, the petitioner is never convicted of any serious crime and as far as the disciplinary proceeding is concerned, already punishment has been imposed and completely implemented.

16.That apart, Rule 9(6)(a) of the Tamil Nadu Pension Rules, 1978 contemplates that departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for disciplinary proceedings and judicial proceedings include criminal proceedings and civil proceedings pending before any Court of law. As such, surcharge proceedings cannot be considered either as departmental proceedings or as judicial proceedings. Though Rule 9(5) of the Tamil Nadu Pension Rules, 1978 contemplates to order recovery of pecuniary loss from pension, but the same could be done only with respect to the disciplinary proceedings or the judicial proceedings as contemplated under Rule 9(6) of the Tamil Nadu Pension Rules.

17.Hence, the validity of the impugned order has to be tested only on the touchstone of the provisions of the Tamil Nadu Co-operative Societies Act, 1983, relevant bye-laws of the Co-operative Urban Bank, Pattukkottai and the Tamil Nadu Pension Rules. There is no other yardstick and it is a singular standard. Once the order fails to pass the muster, the consequence has to follow.

18.Section 87(2) of the Tamil Nadu Co-operative Societies Act, 1983, is extracted hereunder:-

> *"87(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if*

it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864)."

19.Section 87(2) of the Tamil Nadu Co-operative Societies Act, 1983 has made it clear that any sum ordered under Section 87 ie., "Surcharge" could be recovered as if it were an arrear of land revenue and for the purpose of such recovery, the Registrar shall have all the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864.

20.The Hon'ble Full Bench of this Court in ***S.Andiyannan and others Vs. Joint Registrar, Co-operative Societies and others*** reported in ***2015 (4) CTC 1***, while dealing with a similar case has passed a favourable order to the petitioner thereat and the relevant portion of which is extracted as follows:-

"29....... Answer to the second question referred to this Bench:

As contemplated under Section 87 of the Tamil Nadu Co-operative 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 Co-operative institution, based on the proceeding already initiated for surcharge, the same could be recovered in the manner known to law."*

21.From the discussions supra, we can conveniently arrive at a decision that the surcharge proceeding is neither a disciplinary proceeding nor a judicial proceeding which would attract penal consequences. Since the petitioner has been allowed to retire by the respondents, the conditional order for retiring which has been impugned herein is per se illegal for the reason that there is no provision in the relevant Tamil Nadu Co-operative Societies Act, 1983 or bye-laws concerned to retain a person in service after attaining the age of superannuation. That apart, though the enquiry officer has concluded that a total loss of Rs.2,91,500/- + Rs.16,25,396/- due to the shortfall caused by the belated sale of loan default jewelry by auction as against six persons including the petitioner, if the surcharge proceedings conclude detrimental to the petitioner and five others fastening liability of the aforesaid amount on them, then the recovery of 1/5 of the said amount could be made by the respondents only as contemplated under Section 87(2) of the Tamil Nadu Co-operative Societies Act, 1983.

22.In view of the same, this Court hereby quashes that portion of conditional retirement ie., allowing the petitioner to retire from service without prejudice to the pending surcharge proceedings in Na.Ka.No.1214 of 2019 Sa.Pa, dated 30.05.2019, in the impugned order issued by the second respondent in Na.Ka.No.4554/2022/KA, dated 30.06.2022 and consequently, direct the respondents to pay the complete terminal benefits to which the petitioner is entitled to.

23.Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1.The Registrar of Co-operative Societies,
Nvn Malaigai,
170, EVR Periyar High Road,
Kilpauk,
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L.VICTORIA GOWRI, J.

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