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W.P.No.13285/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.13285 of 2021
and W.M.P.No.14103 of 2021

K.Rajendran

... Petitioner

/vs/

1. The Chairman, Common Cadre Committee /
The Joint Registrar of Co-operative Societies,
Cuddalore Region,
Cuddalore District.

2. II 533, Kavanur Primary Agricultural
Co-operative Societies Ltd.,
Rep. by its President,
Kavanur Post,
Srimusnam Taluk,
Cuddalore District.

... Respondents

Writ Petitions are filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the first respondent in Na.Ka.No.944/2020/nu dated 28.02.2020 and consequential letter of the second respondent dated 29.02.2020 so far as withholding the



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petitioner retirement benefits and quash the same and direct the respondents to pay the petitioner retirement benefits i.e. Payment of Gratuity of Rs.3,64,616/-, Leave Salary of Rs.1,60,000/- and Security Deposit of Rs.1,500/- totally Rs.5,26,116/- with 12% Statutory interest.

For Petitioner ... Mr.S.Kanndasan
for Mr.M.S.Palaniswamy

For Respondents ... Mr.S.Ravikumar
Special Govt. Pleader for R1 & R2

ORDER

The petitioner has filed this writ petition challenging the order of the first respondent in Na.Ka.No.944/2020/nu dated 28.02.2020 and consequential letter of the second respondent dated 29.02.2020 and to direct the respondents to pay retirement benefits to the petitioner.

2. The petitioner who was the Secretary on the second respondent society had attained the age of superannuation and he was allowed to retire subject to the surcharge proceedings that might be taken against him. The grievance of the petitioner is that even after his retirement he was not



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settled with gratuity, provident fund and other retiral benefits for which he is entitle to.

3. Mr.S.Kannadasn, the learned counsel for the petitioner, submitted that as per Section 78 & 79 of the Tamil Nadu Co-operative Societies Act, the gratuity and provident fund cannot be withheld to an employee belonging to the Co-operative Society after his retirement; since the terminal benefits of the petitioner has been withheld, he has filed this writ petition seeking direction against the respondents.

4. Mr.S.Ravikumar, the learned Special Government Pleader, submitted that since the petitioner has been allowed to retire without prejudice to Section 82 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as “the Act”), he cannot seek disbursement of terminal benefits; while the petitioner was continuing the service no disciplinary action has been initiated against him.



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5. There is no quarrel on the point that the petitioner has been allowed to retire from service on the condition that proceedings under Section 82 of the Act will be initiated against him; after an inspection has been conducted, surcharge proceedings have also been initiated under Section 87 of the Act and in which surcharge award has been passed on 07.07.2021.

6. The learned counsel for the petitioner submitted that the petitioner has filed an appeal over the above proceedings and the same is pending and in fact an order of interim stay has also been granted and it is in force. But the essential point that has to be dealt in this petition is that whether the respondent can withhold the retiral benefits of the petitioner in view of proceedings under Section 87 of the Act, that was going to be taken subsequent to his retirement.

7. As per the model special by-laws relating to the service conditions of the employees of II 533 Kavanoor Primary Agricultural Co-operative



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Societies in Chapter VI, Explanation IV, the following is stated with regard to the withholding of terminal benefits:

“ Explanation IV:

1. The discharge of a person appointed on probation before the expiry or at the end of the prescribed or extended period or probation or of a person engaged on contract in accordance with the terms of the contract on the expiry of the period of the appointment or of a person engaged on daily wages does not amount to removal or dismissal within the meaning of this special by law.

2. The disciplinary proceedings instituted against an employee, while he was in service, shall be deemed to be proceedings under this special by law, even after his retirement, and be continued and concluded by the competent authority in the same manner as if the employee had continued in service. In the even to any such disciplinary proceedings having been initiated and if the society has reason to believe that the disciplinary proceedings will result in the removal or dismissal of the employee from service, the society shall place the employee under suspension. The society also, shall not make payment of the terminal benefits like gratuity etc., payable to the employee until the disciplinary proceedings are finally concluded.”

8. Admittedly no disciplinary proceedings has been initiated against the petitioner at the time while he was in service. Until now no disciplinary proceedings have been initiated against the petitioner. No doubt a criminal



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case has been registered and the same is pending for investigation. But the technical point revolves around withholding of terminal benefits and the petitioner was allowed to retire from service. Before answering to that issue, it has to be resolved as to whether surcharge proceedings initiated against the petitioner be construed as punishment imposed on him. In this regard it is worthwhile to extract the judgment of the Full Bench of this Court held in ***S.Andiyannan and others Vs. Joint Registrar, Co-operative Societies and others reported in 2015 Writ L.R.755***. In the said judgment it is held that surcharge proceedings are only towards recovery of the amount from the employer or any other person who has caused financial loss to the Co-operative Society.

9. After making reference to various judgment of the Hon'ble Supreme Court it is ultimately held that the surcharge cannot be construed as matter of punishment. In fact the Full Bench of this Court went ahead and stated that even consequent to the surcharge proceedings under Section 87 of the Act, no disciplinary action can be initiated against a retired employee. It is understandable if any such action has been initiated against



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the petitioner while he was in service. But, the above proceedings under Section 87 of the Act has been initiated subsequent to his retirement and the same cannot be construed as a punishment in view of the well settled position of law. In this regard it is worthwhile to extract the issues that have arisen before the Full Bench.

“ 1. Whether the disciplinary proceedings initiated against an employee of a co-operative society, governed by the Tamil Nadu Co-operative Societies Act, 1983, could be continued even after retirement of the said employee ?

2. Whether Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 could be considered as an enabling provision impliedly empowering the disciplinary authority to continue the disciplinary proceedings even after the retirement of an employee of a cooperative society, governed by the Tamil Nadu Cooperative Societies Act, 1983 ?”

The above reference made to the Full Bench has been answered as below:

“Answer to the first question:

Under the Tamil Nadu Co-operative 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



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employer to continue the departmental proceeding, the employer, would have no authority to continue the departmental proceeding after the retirement of the employee.

Answer to the second question:

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, (1920), 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."

10. As per the above dictum laid, the departmental enquiry against the retired employee is subject to the applicability of statutory rule and by-law which would govern the terms and conditions of the service of the



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respective employee of the respective Society. As pointed out earlier as per the by-laws of the society with regard to the conditions of service, unless the disciplinary proceeding initiated against the employee while he was in service, that cannot be continued after his retirement. Admittedly as against the petitioner no disciplinary proceedings have been initiated while he was in service and that shall not be continued after his retirement.

11. So far as impact of the surcharge proceedings under Section 87 of the Act is concerned, the same can be initiated even subsequent to the retirement of a person because it cannot be construed as punishment. However, such proceedings shall not result in any disciplinary action against the employee. So in all probability the proceedings under Section 87 of the Act shall not be construed as a enabling provision which would give an implied power to an employer to continue any disciplinary proceedings against the petitioner post retirement.

12. Since the second respondent has not understood his own regulation and withheld the terminal benefits of the petitioner, even after



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allowing him to retire on 29.02.2020, a direction needs to be issued against the respondents to consider the representation of the petitioner and pass orders.

13. In the result, this Writ Petition is allowed and order passed by the first respondent in Na.Ka.No.944/2020/nu dated 28.02.2020 and the consequential letter of the second respondent dated 29.02.2020 is hereby quashed and the respondents are directed to consider the representation of the petitioner dated 19.03.2021 in the light of the above findings and observations and pass orders to release the terminal benefits of the petitioner including gratuity along with eligible interest and all other retiral benefits along with interest @6% from the date of retirement of the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

26.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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R.N.MANJULA ,J.

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