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W.P.No.32208 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.32208 of 2023

and

W.M.P.No.31818 of 2023

K.Gnanavel

.. Petitioner

Vs.

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

2.No.622 Mohanur Primary Agricultural
Co-operative Credit Society,
Rep by its Administrator / President,
Mohanur Post and Taluk,
Namakal District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the charge memo in Na.Ka.No.993/2020/Thovasa dated 15.05.2023 and consequential 2nd show cause notice in Na.Ka.No.993/2020/Thovasa dated 09.10.2023 on the file of the 1st respondent quash the same and direct the respondents to pay all the petitioner's retirement benefits with interest for delayed payment at the rate of 10% p.a.



For petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.M.Murali
Government Advocate
for Mr.M.s.Premkumar
Government Advocate

ORDER

The present writ petition has been filed challenging the charge memo issued by the 1st respondent in Na.Ka.No.993/2020/Thovasa dated 15.05.2023 and consequential show cause notice in Na.Ka.No.993/2020/Thovasa dated 09.10.2023 and for a consequential direction to the respondents to pay the retirement benefits to the petitioner with interest.

2.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

3.The case of the petitioner is that he joined the 2nd respondent society as a Clerk on 01.03.1985. He was thereafter promoted as Senior Clerk on 31.12.1996 and subsequent promotion was to the post of Assistant Secretary on 07.09.2012 and ultimately, the petitioner was promoted to the post of Secretary on 01.12.2013. The petitioner attained the age of superannuation on 31.05.2023. He was in fact relieved from

<https://www.mhc.tn.gov.in> service by the Joint Registrar of Co-operative Societies through



proceedings dated 30.05.2023.

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4.The further case of the petitioner is that he is a Common Cadre employee under G.O.(Ms).No.14, Corporation, Food and Consumer Protection (CN1) Department, dated 12.02.2019. While so, the 1st respondent issued a charge memo dated 15.05.2023. As per the charge memo, it was alleged that the petitioner had issued crop loan and did not take any effective steps to recover the same as a result of which it became time barred loans. On receipt of the charge memo, the petitioner also gave his explanation and denied all the charges. An Enquiry Officer was appointed by the 1st respondent and he also submitted a report on 08.09.2023. It is relevant to note that the Enquiry Officer did not recommend for any surcharge action or any criminal case against the petitioner. However, the 1st respondent issued the second show cause notice dated 09.10.2023 and directed the petitioner to submit explanation on the findings of the Enquiry Officer.

5.The petitioner aggrieved by the first show cause notice dated 15.05.2023 and the second show cause notice dated 09.10.2023, has filed the present writ petition mainly on the ground that the 1st respondent lacked jurisdiction to initiate such proceedings against the petitioner since



the petitioner belonged to the Common Cadre and has already been relieved from his services.

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6.On carefully going through G.O.(Ms).No.14, Corporation, Food and Consumer Protection (CN1) Department, dated 12.02.2019, it is seen that the persons who come within a Common Cadre has been defined under Section 2(g), which states that a Common Cadre Employee means the Secretary of the Primary Agricultural Co-operative Credit Societies, to whom the rules will apply. The rules are called as Tamil Nadu Primary Agricultural Co-operative Credit Societies Common Cadre Service Rules, 2019.

7.In so far as the disciplinary proceedings are concerned, it can be initiated against a Common Cadre employee only by the Committee as provided under the Rules. As per the Rules, only the Joint Registrar of Co-operative Societies is the competent authority to initiate disciplinary proceedings as against the persons who fall within a Common Cadre.

8.In the instant case, the petitioner was actually relieved from his service on his attaining superannuation. Therefore, it is not known as to how disciplinary proceedings can be initiated after the petitioner is



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relieved. As per G.O.(Ms).No.14, Corporation, Food and Consumer Protection (CN1) Department, dated 12.02.2019, there is no power vested with the 1st respondent to initiate the disciplinary proceedings against the petitioner after his retirement and after he is relieved from the services. It is now too well settled that once an employee is retired from service, thereafter, there is no power or jurisdiction to continue the disciplinary proceedings after the retirement. In the case in hand, he petitioner attained superannuation on 31.05.2023 and he was also relieved by the 1st respondent through proceedings dated 30.05.2023. Thereafter, the disciplinary proceedings cannot continue once the petitioner is relieved. Useful reference can be made to the judgment of the Hon'ble Full Bench in ***S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai & another*** reported in ***2015-3-L.W. 513***. It was categorically held as follows:

“29. The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a co-operative society governed by the Tamil Nadu Co-operative Societies Act can be continued even after the retirement of the said employee. The decisions relied on by both the learned' counsel have categorically make it clear that the legal position is that the authority could continue the departmental enquiry against retired employee, only subject to applicable statutory Rules or bye-law, which govern the



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terms and conditions of his service of the employee. Hence, the relevant Rules governing the service conditions of the employee is the determining factor as to whether and in what manner a domestic enquiry can be continued against an employee, who retired after reaching the age of superannuation. Hence, had there been any enquiry initiated while the delinquent employee was in service, it could be continued even after his retirement, subject to the service Rules or bye-law of the co-operative society. If the service Rules relating to the employee permits for continuation, there would be no bar in continuing the departmental proceeding, that was initiated while he was in service, even after his retirement. It is also categorically held by the Hon' ble Supreme Court in the latest decisions, that in such circumstances, even if the guilt is proved, there is no possibility of imposing punishment of dismissal or removal from service, as the same is not legally sustainable.

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

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 employer to continue the departmental proceeding, the employer, would have no authority to continue the departmental



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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 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. 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.

Answering the questions 1 and 2 referred to this Bench, the matter is ordered to be remitted back to the Reference Court for disposal, according to law."

9. In the light of the above discussions, this Court has no hesitation to interfere with the impugned charge memo dated 15.05.2023 in Na.Ka.No.993/2020/Thovasa and consequential 2nd show cause notice in

Na.Ka.No.993/2020/Thovasa dated 09.10.2023 issued by the 1st



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respondent and accordingly the same are hereby set aside. There shall be a direction to the respondents to settle all the retirement benefits of the petitioner within a period of six (6) weeks from the date of receipt of a copy of this order. If there is any delay in settling the retirement benefits beyond the time period fixed by this Court, the respondents will be liable to pay interest at the rate of 7.5% per annum for such delayed period from the date of which the petitioner became entitled for payment of pension.

10. In the result, this Writ Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed.
No costs.

05.08.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

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

2. No.622 Mohanur Primary Agricultural
Co-operative Credit Society,



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Rep by its Administrator / President,
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