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W.P.No.29508 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

THE HONOURABLE MRS.JUSTICE **N.MALA**

W.P.No.29508 of 2017 &
W.M.P.No.31815 of 2017

G.Jayabalan

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Society
Vellore Zone, Vellore

2. Vellore District Central Co-operative Bank
rep. By its Joint Registrar / Managing Director,
No.3, Anna Salai, Vellore – 632 101

... Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus after calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 28.04.2016 bearing Revision Petition Na.Ka.No.5076/2015 A2 Revision Petition No.12/2015 A2 and consequently direct the 2nd respondent to refund Rs.1,45,000/- recovered from the terminal benefits of the petitioner towards the punishment of stoppage of increment with cumulative effect from 3 years along with interest at the rate of 18% per annum.



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For Petitioner : Mr.Balan Haridas

For Respondents : Mr.R.Kumaravel for R1
Additional Government Pleader
Mr.L.P.Shanmugasundaram for R2

ORDER

The Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus by calling for the concerned records from the 1st respondent, quash the order of the 1st respondent dated 28.04.2016 bearing Revision Petition Na.Ka.No.5076/2015 A2 Revision Petition No.12/2015 A2 and consequently direct the 2nd respondent to refund Rs.1,45,000/- recovered from the terminal benefits of the petitioner towards the punishment of stoppage of increment with cumulative effect from 3 years along with interest at the rate of 18% per annum.

2. The petitioner was working as Field Manager in the 2nd respondent / Co-operative Bank. The petitioner three months prior to his retirement, was issued with a charge memo on 26.02.2014. The petitioner retired on superannuation on 31.05.2014. Though the petitioner was permitted to retire, his terminal benefits were withheld pending criminal proceedings and surcharge proceedings. After the retirement of the petitioner, the 2nd respondent conducted enquiry and imposed punishment of stoppage of



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increment for three years with cumulative effect by order dated 10.04.2015.

The petitioner preferred Revision Petition before the 1st respondent on the ground that the 2nd respondent had no power to impose punishment post-retirement of the petitioner. The 1st respondent rejected the Revision Petition and therefore, the petitioner has filed the Writ Petition challenging the same.

3. The 2nd respondent filed a detailed counter stating that though the petitioner received the charge memo during February, 2014 itself, the petitioner submitted his explanation on 26.03.2014, with a malafide intention of delaying the disciplinary proceedings. The respondents therefore, submitted that the delay in passing the impugned order was attributal to the petitioner and hence the impugned order could not be faulted.

3. The learned counsel for the petitioner submitted that the respondents had no jurisdiction to continue disciplinary proceedings post retirement of the petitioner in the absence of any Rule, Regulation or By-law providing for continuation of disciplinary proceedings, post retirement.



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4. The learned counsel for the petitioner relied on the **Full Bench Decision of the Madurai Bench of this Court reported in 2015-3 Law weekly 513 [S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai & another]** in support of his submission.

5. The learned counsel for the respondents, on the other hand, reiterating the contentions raised in the counter affidavit submitted that the Writ Petition had no merits and the same deserved to be dismissed.

6. Heard the learned counsel on both sides and perused the materials on record.

7. The full bench of **Madurai Bench of this Court reported in 2015-3-Law Weekly 513 [S.Andiyannan Vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai & Another]** while considering the similar issue, at Paragraph Nos.29 and 30 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



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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 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 proceeding after the retirement of the employee.”

8. The learned counsel for the respondents conceded that there were no special Bye-laws, Rules or Regulation in the Society for continuing disciplinary proceedings post retirement and that Special Bye-laws were



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amended in the year 2018, i.e., on 28.02.2018, to the effect that the disciplinary proceedings instituted while in service were deemed to be proceedings under the Special Bye-law and the same could be continued and concluded even after retirement by the competent authority.

9. Admittedly, the amendment is not retrospective. As there was no special bye-law permitting the respondents to continue the proceedings post retirement of the petitioner, the aforesaid full bench Judgment squarely applies to the facts of the case and hence the impugned order is set aside.

10. The Writ Petition is accordingly allowed with a direction to the respondents to refund the sum of Rs.1,45,000/- recovered from the terminal benefits of the Writ Petitioner within a period of eight weeks from the date of receipt of copy of this Order along with interest at the rate of 6% per annum. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

11.09.2024

Index: Yes/ No
Internet: Yes/ No
Speaking Order/ Non Speaking Order
ssd



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- To
1. The Chief General Manager (P&A) &
Disciplinary Authority
PEC Limited
(A Government of India Enterprise)
Hansalaya Barakamba Road,
New Delhi – 110 001
 2. The Branch Manager
PEC Limited
76, Greams Road,
Thousand Lights,
Chennai – 600 006



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N.MALA,J.

ssd

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