BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.11911 of 2024 &
W.M.P.(MD)Nos.10615 and 10616 of 2024

V.Parameshwaran ... Petitioner

vs.

1.The Registrar of Co-operative Societies,
Office of the Registrar of Co-operative Societies,
170, E.V.R. High Road,
Kilpauk, Chennai - 600 010.

2.The Joint Registrar of Co-operative Societies,
O/o. the Joint Registrar of Co-operative Societies,
Sivagangai Region, Collectorate Unit II,
Opp. to Govt. Arts College for Women,
Kanjirangal, Sivagangai - 630 562.

3.The Deputy Registrar of Co-operative Societies,
Sivagangai Circle, Integrated Co-operative Complex,
Collectorate Unit II,
Opp. to Government Women's Arts College,
Kanjirangal, Sivagangai - 630 562.

4.The Administrator,
NN 568 Kumarapatti Primary Agricultural
Co-operative Credit Society Ltd.,
@ Thamarakki, Thamarakki Post,
Sivagangai Taluk,

Sivagangai District - 630 561. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent passed in Na.Ka. 233/2020/Tho.ve.sa(2) dated 31.01.2023, quash the same and consequently allow the petitioner to go on retirement and direct the third respondent to pay terminal benefits eligible to him.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondents : Mr.S.Kameshwaran
Government Advocate

O R D E R

Heard Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner and Mr.S.Kameshwaran, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this petition seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent in Na.Ka.233/2020/Tho.ve.sa(2) dated 31.01.2023, quash the same and consequently allow him to go on retirement and direct the third respondent to pay terminal benefits eligible to him.

3. The petitioner was placed under suspension on the date of his superannuation i.e., on 31.01.2023 by stating that as per the audit conducted during the years 2020 and 2021, there were deficiencies in the stock for which the petitioner was incharge.

4. Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner submitted that even though the respondents came to know about the alleged deficiencies in the stock during the year 2021 itself, they have placed the petitioner under suspension only on the date of his superannuation, which is illegal. The petitioner's retiral benefits like Provident Fund and Gratuity are not liable for attachment and even for any extraneous reasons, if the respondents hold a surcharge proceedings that will not have any impact upon the retiral benefits of the petitioner. Even though the audit report for the year 2021 was available to the respondents, immediately after the audit was over, no action has been taken so far against the petitioner by alleging that there were deficiencies in the stock for which he was incharge.

5. However, it is stated in the impugned order that proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 will be initiated to determine the loss caused by the petitioner. Even though such proceedings are pending, that cannot have any relevance to withhold the petitioner's retiral benefits by placing him under suspension. In such case, the petitioner can be allowed to retire subject to the outcome of the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Since the recovery of surcharge is like that of a revenue recovery, the respondents shall not withhold the retiral benefits of the petitioner by stating that there might be liability fixed upon the petitioner in the ensuing surcharge proceedings.

6. As per the Government Order in G.O.Ms.No.144, Personnel and Administrative Reforms (N), Department, dated 08.06.2007, the Government servant shall not be placed on suspension at the verge of the retirement. For a better clarity, the guidelines issued in the said

Government Order are extracted hereunder.

"5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in super session of orders issued in the reference second read above.

(i) The Disciplinary authority should not resort to last minute suspension of the Government servants (i.e) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date or retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

(iii) In respect of Directorate of Vigilance and Anti-Corruption

and Tribunal for Disciplinary Proceedings cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government. It is noticed that Directorate of Vigilance and AntiCorruption and Tribunal for disciplinary Proceedings cases are dragged on for a long time without adhering to the time limit prescribed by the Government in Letter first read above. In such cases, the disciplinary authorities should take up the matter with the Directorate of Vigilance and Anti-corruption or Tribunal for disciplinary Proceedings to expedite such cases and final orders issued within the time limit prescribed. In unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision to place him under suspension well in advance (i.e) prior to the date of retirement of the Government servants and not on the date of retirement.

(iv) Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government Servant concerned.

(v) Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such

as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56 (1) (c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are not issued on the date of retirement of the Government servants. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rule 56 (1) (c) have to be issued on the date of retirement only .

(vi) In cases where charges have been framed and the disciplinary authority is of the view that a pension cut or withholding of pension under the Tamil Nadu Pension Rules, 1978 would suffice for the delinquency committed, the disciplinary authority may allow the Government servant to retire from service without prejudice to the departmental proceedings.

(vii) If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three months prior to the date or retirement of the Government Servant and charges could not be framed before

the date of retirement of the Government servant, then also it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(a) (c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.

(viii) The above instructions shall not be made applicable to cases of Directorate of Vigilance and Anti-Corruption enquiry and criminal cases."

7. In the instant case, the above guidelines have been violated and the petitioner has been served with suspension order only on the date of his superannuation and hence, it is not sustainable.

8. In view of the above observations, the writ petition is **disposed of** and the impugned order of the second respondent in Na.Ka. 233/2020/Tho.ve.sa(2) dated 31.01.2023 is set aside and the second respondent is directed to pass orders permitting the petitioner to retire from service with effect from the date of his attaining superannuation on

31.01.2023 subject to the outcome of the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 pending against him in respect of any audit report done for any financial year during which he was in service. It goes without saying that the terminal benefits of the petitioner need not be withheld and if he comes under the pensioner category, the monthly pension may also be disbursed to him. The petitioner is also entitled to the interest for the delay in settling terminal benefits, if any. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.06.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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R.N.MANJULA, J.

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