



WP(MD) No.14130 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.14130 of 2024
and
W.M.P.(MD) No.12407 of 2024

V.Balakrishnan

... Petitioner

Vs.

- 1.The Joint Registrar of Cooperative Societies,
Pudukkottai Region,
Integrated Cooperative Office Complex,
Collector Office Near,
Annavaasal Road,
Pudukkottai District - 622 002.
- 2.The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-Operative Societies,
Aranthangi,
Pudukkottai District.
- 3.The Administrator,
PA66, Ponamaravathy Government Aided School
Employees Co-Operative Thrift and Credit Society Limited,
Nattukkal Main Road,
Ponamaravathy,
Pudukkottai District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.720/2024Aa1 dated 18.04.2024 and the consequential impugned order in Na.Ka. 720/2024Aa1 dated 29.04.2024 on the file of the respondent No.2 and quash the same as illegal and consequently for a direction, directing the respondents to disburse the retirement benefits including earned leave encashment, gratuity and provident fund contribution of the Employer with proportionate interest within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Raja Simman

For Respondents : Mr.K.Selvaganesan

Additional Government Pleader

ORDER

The petitioner has filed this Writ Petition challenging the impugned orders of the second respondent passed in Na.Ka. 720/2024Aa1 dated 18.04.2024 and in Na.Ka. 720/2024Aa1 dated 29.04.2024 on the file of the respondent No.2 with a consequential direction to the respondents to disburse the retirement benefits including earned leave encashment, gratuity and provident fund contribution of the Employer with proportionate interest.



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2. Heard Mr.T.Aswin Raja Simman, learned counsel for the petitioner and Mr.K.Selvaganesan, learned Additional Government Pleader appearing for the respondents.

3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4. The petitioner, who was working as Secretary in the third respondent society has been allowed to retire on 30.04.2024, however with an observation that any excess payment made to him towards his salary due to the irregular promotion has to be recovered. Even prior to that date, ie., on 18.04.2024, the second respondent has written a communication to the third respondent calling him to cancel the promotion which was given to the petitioner in an irregular manner and regularise his services. Despite the advice so given, the third respondent has not submitted the recommendation to the second respondent till the retirement of



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the petitioner. However, the petitioner was not allowed to retire simpliciter. The order of retirement was subject to certain observation that any excess payment made to him towards his salary due to the irregular promotion has to be recovered.

5. The learned Additional Government Pleader appearing for the petitioner submitted that there would be no employer-employee relationship consequent to the retirement of the petitioner and hence, the order dated 29.04.2024 is not illegal.

6. The learned counsel appearing for the petitioner submitted that on 29.04.2024, the petitioner was very much an employee, since his superannuation was due only on the next day, ie., on 30.04.2024 and he also drew the attention of this Court to the Full Bench Judgment of this Court in ***S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and another [2015 (4) CTC 1(FB)]*** wherein it has been held as under:-

“30. Answer to the first question referred to this



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Bench: Under the Tamil Nadu Cooperative 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.

31. Answer to the second question referred to this Bench:

As contemplated under Section 87 of the Tamil Nadu Cooperative 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 cooperative 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



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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.”

7. The facts involved in the aforesaid case do not contemplate a situation where the employee has been allowed to retire on certain condition. So, no parlance can be drawn. In the order permitting the petitioner to retire, it is stated that there are some irregularities in promoting the petitioner and hence his pay fixation has to be revised.

8. The impugned order only says that if at all any excess payment made, that is to be recoverable. But sofar, no order has been passed in accordance with the observation made in the



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impugned order and hence, the prayer sought for stoppage of recovery or questioning the illegality of the recovery is premature. Only if the respondents pass any order consequent to the observation so made in the order allowing the petitioner to retire, the petitioner can file a petition challenging the same for the cause of action.

9. It is now brought to the notice by the learned counsel appearing for the petitioner that the petitioner has given his explanation. The respondents are directed to take a call and consider the situation arisen in this case on hand and thereafter, pass an order regarding the observation that has been made in the impugned order dated 29.04.2024, within a period of four weeks from the date of receipt of a copy of this order.



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10. In the result, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
NCC : Yes / No
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To

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R.N.MANJULA, J.

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Order made in
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