BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16713 of 2024 &
W.M.P.(MD)No.14462 of 2024

M.Dharmaraj ... Petitioner

vs.

1.The Joint Registrar of Co-operative Societies,
Sivagangai District Co-operative Society Registrar Office,
Sivagangai.

2.The Deputy Registrar of Co-operative Societies,
Sivagangai District Co-operative Society Registrar Office,
Sivagangai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certirorarified Mandamus calling for records pertaining to the impugned order in Na.Ka.No.1519/2024/Thooveesa dated 29.04.2024 issued by the first respondent received by the petitioner on 25.06.2024, quash the same as illegal and consequently direct the respondents to permit the petitioner to retire from service on 30.04.2024 on the date of his superannuation with all attendant benefits and continuity of service.

For Petitioner : Mr.K.Karthikeyan

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

O R D E R

Heard Mr.K.Karthikeyan, learned counsel appearing for the petitioner and Mr.M.Senthil Ayyanar, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this petition seeking to quash the impugned order of the first respondent in Na.Ka.No. 1519/2024/Thooveesa dated 29.04.2024 and to direct the respondents to permit him to retire from service on 30.04.2024 on the date of his superannuation with all attendant benefits and continuity of service.

3. The petitioner who was working as a Secretary in a Co-operative Society has been placed under suspension on 29.04.2024 just one day prior to his superannuation i.e., 30.04.2024 on the allegation that he has received a sum of Rs.50,800/- toward his earned leave encashment and Rs.1,10,359/- towards arrears of salary. It is also alleged that the petitioner has sanctioned crop loan of Rs.4,87,500/- to 12 persons who are not the members of the Society.

4. Mr.K.Karthikeyan, learned counsel appearing for the petitioner submitted that the petitioner had already remitted the sum of Rs.50,800/- and Rs.1,10,359/- alleged in the suspension order. It is his submission that most of the persons for whom the petitioner had issued loan have repaid the loan and legal action has been initiated against rest of the persons for recovery.

5. 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.”

6. In the instant case, the above guidelines have been violated and the petitioner was kept under suspension just one day prior to his superannuation. Recovery of loan amount is a joint action and the petitioner alone cannot be held liable for the same. When the other amounts alleged in the suspension order were recovered from the petitioner, it is appropriate for the respondents to allow him to retire from service. Furthermore, the petitioner has not been issued with any notice for surcharge proceedings also. In the absence of the same, nothing will prevent the respondents from relieving the petitioner by issuing appropriate proceedings.

7. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the first respondent in Na.Ka.No.

1519/2024/Thooveesa dated 29.04.2024 is set aside and the respondents are directed to allow the petitioner to retire from service by issuing appropriate proceedings forthwith and disburse his retirement benefits as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2024

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

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To

1.The Joint Registrar of Co-operative Societies,
Sivagangai District Co-operative Society Registrar Office,
Sivagangai.

2.The Deputy Registrar of Co-operative Societies,
Sivagangai District Co-operative Society Registrar Office,
Sivagangai.

R.N.MANJULA, J.

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