



W.P.(MD)No.16736 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16736 of 2024 &
W.M.P.(MD)Nos.14481 & 14482 of 2024

D.Karnan

... Petitioner

vs.

- 1.The Regional Co-op. Joint Registrar,
Kalyanapuram,
Pudukkottai District.
- 2.The Deputy Registrar of Co-operative Society,
Aranthangi Circle,
Pudukkottai District.
- 3.The Administrative Officer,
M.M.595, Vamban Primary Agri Co-operative
Credit Society,
Vamban Nal Road,
Alangudi Taluk,
Pudukkottai 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 pertaining to the impugned order passed by the first respondent in Roc.No.1592/2024/A2 (PoPaNi) dated 30.04.2024 quash the same as illegal and arbitrary and consequently direct the respondents to relieve the



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petitioner on attaining the age of superannuation with effect from the afternoon of 30.04.2024 and to pay the retirement benefits within the time frame as fixed by this Court.

For Petitioner : Mr.M.Rajarajan

For Respondents : Mr.K.Selva Ganesan
Additional Government Pleader

ORDER

Heard Mr.M.Rajarajan, learned counsel appearing for the petitioner and Mr.K.Selva Ganesan, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has filed this writ petition seeking to quash the impugned order of the first respondent in Na.Ka.No.1592/2024/A2 (PoPaNi) dated 30.04.2024 as illegal and arbitrary and consequently direct the respondents to relieve him on attaining the age of superannuation with effect from the afternoon of 30.04.2024 and to pay the retirement benefits within a stipulated time.



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3. The petitioner who was working as a Secretary in the third respondent Co-operative Society has been placed under suspension exactly on the date of his superannuation.

4. Mr.M.Rajarajan, learned counsel appearing for the petitioner submitted that in the impugned order it is alleged that since enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 has been initiated against the petitioner, he is placed under suspension. It is his submission that even though surcharge proceedings have been initiated and if surcharge is determined, that can be recovered as that of revenue recovery and for that there is no necessity to place the petitioner under suspension.

5. The issue on hand is no more *res integra*. It has already been decided by this Court in an earlier writ petition in W.P.(MD)No.11911 of 2024 dated 19.06.2024, wherein, this Court has held as under.

"4. Mr.V.O.S.Kalaiselvam, learned counsel appearing for the petitioner submitted that even though the respondents came to know about the alleged



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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



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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



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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



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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 fact, revised guidelines have been issued in the Government Order in G.O.Ms.No.111, Human Resources Management (N) Department, dated 11.10.2021 by adding clarity as to how the disciplinary proceedings should be conducted and completed before the retirement without prejudice to the employees. Even if the case involves corruption, the petitioner cannot be placed under long suspension. When such is the case, the petitioner shall not suffer suspension on the date of superannuation for the alleged loss about which he does not even know the details.



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7. In vie of the above stated reasons, the writ petition is **allowed** and the impugned order of the first respondent in Na.Ka.No. 1592/2024/A2 (PoPaNi) dated 30.04.2024 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, if no other proceedings is pending against him. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.07.2024

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

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R.N.MANJULA, J.

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