



**W.P.(MD).No.21673 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

**DATED : 09.12.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)No.21673 of 2024

and

W.M.P(MD) Nos.18305, 18306 and 23354 of 2024

S.Johnson

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies/  
Common Cadre Authority,  
Office of the Joint Registrar of Co-operative Societies,  
Government Multistoried Building,  
Kaajamalai, Tiruchirappalli.
2. The Deputy Registrar of Co-operative Societies,  
Office of the Deputy Registrar  
of Co-operative Societies,  
Tiruchirappalli Circle,  
Tiruchirappalli.
3. The Administrator,  
R.1589, Uyyakondan Thirumalai  
Primary Agricultural Co-operative  
Credit Society,  
Nachikourichi Village,  
Somarasampettai Post,  
Srirangam Taluk,  
Tiruchirappalli District.



**W.P.(MD).No.21673 of 2024**

4. The Administrator,  
R.115, Somarasampettai Primary  
Agricultural Co-operative Credit Society,  
Somarasampettai, Srirangam Taluk,  
Tiruchirappalli District.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned charge memorandum vide ந.க.1168/2023/பொபதி நாள் : 02.04.2024 and the consequential proceeding vide ந.க.6018/2019/பொபதி நாள் : 31.07.2024 passed by the first respondent and quash the same and consequently direct the respondents to disburse the retirement benefit such as Gratuity, Employees Provident Fund and Earned Leave Salary and all other benefits payable to the petitioner within the time frame.

For Petitioner : Mr.D.Shanmuga Raja Sethupathi

For R1 and R2 : Mr.D.Sasi Kumar  
Additional Government Pleader

For R3 and R4 : No appearance

### **ORDER**

The instant writ petition has been filed by a former Secretary of the third respondent Co-operative Society, challenging the charge memo dated 02.04.2024 and the order dated 31.07.2024, wherein the petitioner has not been permitted to retire.



**W.P.(MD).No.21673 of 2024**

WEB COPY

2. The petitioner herein was issued with a charge memo on 02.04.2024 and while he was about to attain superannuation, under the impugned order dated 31.07.2024, the petitioner was not permitted to retire and he was retained in service, in view of the pendency of the charge memo and also the unsatisfied award passed under Section 87 of the Tamil Nadu Co-operative Societies Act. These two orders are put to challenge in the present writ petition.

3. It is not in dispute that the petitioner being a Secretary of the Co-operative Society is governed by the Tamil Nadu Primary Agricultural Co-operative Society Common Cadre Service Rules, 2019. A perusal of the Common Cadre Service Rules reveal that there is no specific provision under the said Rules for continuation of the disciplinary proceedings beyond the date of retirement or to retain the services beyond the date of superannuation. The Hon'ble Division Bench of our High Court in W.A.Nos.2220 & 2466 of 2021, dated 28.09.2021, has held that the Common Cadre Service Rules will prevail over the bye-laws. Paragraph No.7 of the said judgment is extracted as follows:



WEB COPY



**W.P.(MD).No.21673 of 2024**

*“7. Unless otherwise the bye-law provides, the employee cannot be proceeded against after retirement. This will be applicable to all categories provided they do not come under the purview of G.O. dated 12.02.2019 creating common cadre. Once he comes into the common cadre, for the incident that took place prior to 12.02.2019, the authority competent to deal with the employees in the common cadre is entitled to proceed with the enquiry, but it shall be done only in terms of the clauses mentioned in the G.O. The G.O. has nowhere stated that the employee could be continued to be kept under suspension even after attaining the age of superannuation or there is no saving clause in the G.O. that if there are any conflict between the bye-law and the G.O, the clauses that are not going to be affected by the G.O. would continue to be in operation. In the absence of the enabling provision to continue departmental action of those employees falling under the common cadre, even though the incident would have taken place much prior to G.O. dated 12.02.2019, in the absence of specific clause in the G.O. to proceed departmentally after retirement, the appellant cannot proceed with the departmental action against the writ petitioner.”*



**W.P.(MD).No.21673 of 2024**

WEB COPY

4. In view of the judgment of the Hon'ble Division Bench of this Court, it is clear that there is no specific saving clause in the Common Cadre Service Rules and if there is any conflict between the bye-laws and the Common Cadre Service Rules, the bye-laws which are inconsistent with the common service rules would not continue to be in operation. Therefore, it is clear that on 31.07.2024, the employee employer relationship got severed and thereafter, the disciplinary proceedings cannot be continued.

5. A perusal of the impugned order dated 31.07.2024 reveals that though the petitioner has been relieved from the post of Secretary of the Co-operative Society, he has not been permitted to retire.

6. In view of the above said deliberations, this Court is inclined to pass the following orders:

- a. The impugned charge memo dated 02.04.2024 and the impugned order dated 31.07.2024 wherein the petitioner was not permitted to retire are hereby set aside;
- b. The petitioner is deemed to have retired



WEB COPY



**W.P.(MD).No.21673 of 2024**

from service with effect from 31.07.2024 onwards.

In view of his retirement, no disciplinary proceedings could be continued as against him;

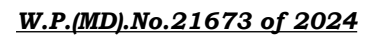
c. The Employees' Provident Fund and Earned Leave Salary of the writ petitioner shall be released within a period of twelve weeks from the date of receipt of a copy of this order; and

d. The other terminal benefits shall be retained by the respondents and the same shall be disbursed depending upon the outcome of the surcharge proceedings.

7. With the above said observations, this Writ Petition stands partly allowed to the extent as stated above. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

**09.12.2024**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
ebsi



1. The Joint Registrar of Co-operative Societies/  
Common Cadre Authority,  
Office of the Joint Registrar of Co-operative Societies,  
Government Multistoried Building,  
Kaajamalai, Tiruchirappalli.

2. The Deputy Registrar of Co-operative Societies,  
Office of the Deputy Registrar  
of Co-operative Societies,  
Tiruchirappalli Circle,  
Tiruchirappalli.

3. The Administrator,  
R.1589, Uyyakondan Thirumalai  
Primary Agricultural Co-operative  
Credit Society,  
Nachikourichi Village,  
Somarasampettai Post,  
Srirangam Taluk,  
Tiruchirappalli District.

4. The Administrator,  
R.115, Somarasampettai Primary  
Agricultural Co-operative Credit Society,  
Somarasampettai, Srirangam Taluk,  
Tiruchirappalli District.



WEB COPY



**W.P.(MD).No.21673 of 2024**

**R.VIJAYAKUMAR,J.**

ebsi

**W.P(MD)No.21673 of 2024**

**09.12.2024**