



W.P.(MD)No.25453 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.25453 of 2023 &
W.M.P.(MD)No.21638 of 2023

Raguram

... Petitioner

vs.

1.The Joint Registrar of Co-operative Societies,
Dindugul, Dindugul District.

2.The Circle Deputy Registrar of Co-operative Societies,
Dindugul, Dindugul District.

3.The Administrator,
DD36, Sithiyankottai Primary
Agriculture Co-operative Credit Society,
Sithiyankottai, Dindugul District.

... 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 pertaining to the impugned order issued by the second respondent in Na.Ka.No.2319/2023/Ve.Se.Sa./dated 17.08.2023, quash the same and consequently, direct the respondents to provide compassionate appoint to the petitioner on the basis of the application dated 10.08.2023.

For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.K.Selva Ganesan
Additional Government Pleader
for R1 and R2



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ORDER

Heard Mr.C.Jeganathan, learned counsel appearing for the petitioner and Mr.K.Selva Ganesan, learned Additional Government Pleader appearing for the respondents 1 and 2.

2. The petitioner has filed this petition seeking to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the second respondent in Na.Ka.No. 2319/2023/Ve.Se.Sa./dated 17.08.2023, quash the same and consequently, direct the respondents to provide compassionate appoint to him on the basis of the application dated 10.08.2023.

3. The petitioner's father who worked as an Attender / Clerk in the third respondent Society died on 02.05.2021 while in service. Subsequently, the petitioner's mother has made an application to the respondents on 10.08.2023 seeking compassionate appointment to the petitioner. However, the same was rejected by the second respondent on the ground that criminal case is pending against the petitioner's father



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consequent to the Section 81 enquiry report and surcharge proceedings.

Hence, the writ petition.

4. Mr.C.Jeganathan, learned counsel appearing for the petitioner submitted that if any criminal case was pending against the petitioner's father, that would become abated on his death. So far as, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act is, 1983 is concerned, it was initiated only after the death of the petitioner's father. Reliance was placed upon the Full Bench Judgment of this Court in the case of ***S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Madurai and others reported in 2015 (4) CTC 1*** and the relevant portion of the Judgment is extracted hereunder.

"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*



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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 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.”

5. In the above case, it is held that surcharge proceedings are not akin to criminal proceedings and it involves only revenue recovery procedure. Admittedly, surcharge proceedings cannot be construed as a criminal proceedings. Even at the time when the petitioner's father died, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act has not been initiated. As stated already, the criminal case against the petitioner's father has become abated on his death and further the proceedings under Section 87(2) of the Tamil Nadu Co-operative Societies Act can be considered only as a revenue proceedings involving a recovery under the Revenue Recovery Act. Even if the petitioner is given appointment on compassionate grounds, nothing will prevent the



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respondents from initiating the recovery proceedings in accordance with law. Since the impugned order has been passed on the wrong premise that criminal case and surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act are pending against the petitioner's deceased father, the same is liable to be set aside.

6. In view of the above stated reasons, the writ petition is **disposed of** and the impugned order of the second respondent in Na.Ka.No.2319/2023/Ve.Se.Sa./dated 17.08.2023 is set aside and the second respondent is directed to consider the application dated 10.08.2023 on the basis of other merits and pass orders afresh within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

13.06.2024
(1/2)

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

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- 1.The Joint Registrar of Co-operative Societies,
Dindugul, Dindugul District.
- 2.The Circle Deputy Registrar of Co-operative Societies,
Dindugul, Dindugul District.



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R.N.MANJULA, J.

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