



W.P.(MD)No.28122 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.28122 of 2023

P.Anandam

... Petitioner

VS

1.The Joint Registrar of Co-operative Societies,
Combined Multi Storage Building for Co-operatives,
Annavasal Road,
Pudukottai.

2. The Deputy Registrar (Public Distribution System),
Combined Multi Storage Building for Co-operatives,
Annavasal Road,
Pudukottai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned suspension order passed by the 1st respondent vide in his proceedings in Rc.1659/2023 A1 dated 26.06.2023 and quash the same and the impugned order by not allowing the petitioner to retire and retain him in service passed by the 1st respondent vide in his proceedings in Rc.1659/2023 A1 dated 30.06.2023 and quash the same and direct the petitioner to retire and direct the 1st respondent to sanction the retirement benefits of the petitioner immediately.

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For Petitioner : Mr.S.Karthikeyan
For Respondents : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

The instant writ petition has been filed by a Co-operative Sub Registrar, challenging the order of suspension dated 26.06.2023 and the order passed by the authorities dated 30.06.2023, thereby retaining his service.

2. A perusal of the impugned suspension order dated 26.06.2023 reveals that the petitioner is facing a criminal charge in Crime No.1 of 2004 dated 10.11.2004 pending before CCIW, Thiruvarur and pending trial before the Judicial Magistrate Court, Tiruthuraipoondi. It further reveals that the petitioner is facing two surcharge proceedings dated 09.07.1998 and 18.09.2015 which were initiated by Deputy Registrar of Co-operative Societies, Mannarkudi Circle and Deputy Registrar (Housing), Thanjavur. A perusal of the impugned retention order reveals that the petitioner is retained in service on the ground that he has been suspended by an order dated 26.06.2023.



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3. According to the learned Counsel appearing for the petitioner, another co-accused in the same crime number namely A.Jothikumar, who was working as a Co-operative Sub Registrar, was permitted to retire after revocation of the suspension order by way of proceedings of the 1st respondent herein dated 30.01.2008.

4. A perusal of the said order reveals that the said A.Jothikumar has been permitted to retire without prejudice to the criminal case and disciplinary proceedings pending against him.

5. The learned Counsel appearing for the petitioner further submits that one of the surcharge proceedings referred in the impugned suspension order has been quashed by this Court in C.R.P.No.512 of 2020 dated 20.12.2023. Therefore, the petitioner is being similarly placed on par with A.Jothikumar and he should be permitted to retire on the same terms and conditions.

6. Per Contra, the learned counsel appearing for the respondents herein, extensively relying upon Paragraph Nos. 8 & 9 of the counter, had contended that the petitioner is not similarly placed on par with A.Jothikumar, because



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apart from criminal proceedings, two surcharge proceedings are also pending as against the petitioner. That apart, role of the petitioner in the said criminal case is different from the role played by the said A.Jothikumar. In such circumstances, the petitioner cannot compare himself with the said A.Jothikumar and he cannot seek similar relief.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. There is no dispute that the petitioner as well as one A.Jothikumar were implicated in a criminal case as accused. The said A.Jothikumar has been permitted to retire from service subject to certain conditions by way of proceedings dated 30.01.2008. In such circumstances, the disciplinary authority cannot distinguish between two co-accused in a criminal case, granting permission to one of the co-accused to retire and retaining the other co-accused in service. In such circumstances, this Court is of the considered opinion that such a discrimination is not legally sustainable and the petitioner should also be permitted to retire subject to the same conditions that were imposed upon the said A.Jothikumar.



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9. As far as the surcharge proceedings arising under section 87 of Co-operative Societies Act is concerned, it is only a recovery proceeding and the same cannot be treated as misconduct and for that reason, a Co-operative Sub Registrar cannot be retained in service. It is needless to point out that even after retirement, the surcharge proceedings could be continued and recovery orders could be passed. Therefore, it is for the authorities to consider the quantum of the surcharge award while disbursing the terminal benefits.

10. In view of the above said facts, the impugned order of suspension and the impugned order of retention are hereby set aside and the first respondent is directed to permit the petitioner to retire from service without prejudice to the criminal case and the surcharge proceedings pending as against the petitioner. The said order shall be passed within a period of twelve (12) weeks from the date of receipt of a copy this order.



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11. With the above said observations, this writ petition stands allowed.

No costs.

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