



WEB COPY

W.A.No. 1247 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No. 1247 of 2024
and
C.M.P.No. 9138 of 2024

- 1.The Additional Registrar of Cooperative Societies,
Chennai Region, 3rd Floor, TANFED Building,
No.91, St. Mary's Road, Abiramapuram,
Chennai - 18.
- 2.The Registrar (Housing),
O/o. The Tamil Nadu Cooperative
Housing Federation Compound, II Floor,
No.48, Ritherden Road, Vepery,
Chennai - 600 007.
- 3.The Deputy Registrar (Housing),
No.18, Varartha Nagar Street,
Chengulpet - 603 001.
- 4.The Superintendent of Police,
CCIW ? CID, 1st Floor, Block II,
SIDCO, Government Complex,
Old Corporate Office Building,
T.V.K. Industrial Estate, Guindy,
Chennai - 32.

...Appellants

Vs.

B.Dharmalingam

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the



WEB COPY

W.A.No. 1247 of 2



order dated 25.07.2022 made in W.P.No.14825 of 2018.

For Appellants : Mrs.M.Geetha Thamaraiselvan
For Respondent : Mr.L.Chandrakumar

J U D G M E N T

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Quashment of the order of suspension of the respondent made on 31.05.2018, on the last date of his service had led to this appeal.

2. The respondent, who was working as a Sub-Registrar of Co-operative Societies attained the age of superannuation on 31.05.2018. However, he was not permitted to retire and was placed under suspension on the ground that surcharge proceedings were pending against him and there is also a criminal complaint filed against him. The respondent challenged the suspension order mainly contending that there was no criminal case pending on 31.05.2018 and it was also contended that the appeal filed against the surcharge order was pending. By that time the writ petition came to be taken up for hearing in 2022, the Co-operative Tribunal, by its order dated 06.02.2022 reached the following conclusions:-

"22. From the above deliberations this tribunal comes to



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a firm view that the proceedings of the first respondent under Sec.87 of U/s.87 of TNCS Act, 1983 not being attracted, the appellant did not gain anything from and out of the refixation of scale of pay and being ratified by the subsequent settlement arrived at u/s.12(3) of Industrial Disputes Act on 2009 with retrospective effect. As underlined in the grounds of appeal, the impugned order has been passed to save the skin of officials in helm of affairs i.e., higher pedestal and the averment that the Deputy Registrar (Credit) there after peacefully got retired from service without encountering any hurdle cannot be lost sight of.

23.In the result, the C.M.A.No.20/2019 is allowed by setting aside the order of the 1st respondent in Proceedings No.50/2018/Sa.Pa.1 Dated 30.05.2018. However, no order as to costs.?"

3. It is not in dispute that the orders in C.M.A.No.20 of 2019 have become final. In so far as the criminal case is concerned, the respondent relied upon the communication by the Superintendent of Police CCIW-CID Wing dated 06.06.2018 wherein, it was categorically stated that no criminal complaint was pending against the respondent as on 31.05.2018. It is now stated that a criminal case has been registered against the respondent. The Writ Court found that both the grounds, on which, the respondent was placed under suspension did not survive. The Writ Court after taking note of the

3/9



order in the CMA as well as the communication to the effect that there was no criminal complaint pending against the respondent as on 31.05.2018, allowed the writ petition and quashed the order of suspension.

4. We have heard Mrs.M.Geetha Thamaraiselvan, learned Special Government Pleader appearing for the appellants and Mr.L.Chandrakumar, learned counsel appearing for the respondent.

5. The learned counsel appearing for the appellants would vehemently contend that the date when the order of suspension was made, the surcharge proceedings were pending and the criminal case was also lodged with the Police and therefore, the Authority was justified in not allowing the respondent to retire.

6. Contending contra, Mr.L.Chandrakumar, learned counsel appearing for the respondent would submit that the surcharge proceedings ended in favour of the respondent and the Tribunal has observed that there was no financial loss caused to the Society because of the actions of the respondent. He would also point out that the criminal complaint was returned and the same was not re-filed in time. Therefore, according to the learned counsel



for the respondent, the learned single Judge was right in quashing the suspension order. We have considered the rival submissions.

WEB COPY

7. The order of suspension was made on 31.05.2018 on two specific grounds namely, pendency of surcharge proceedings and the pendency of criminal complaint. As far as the surcharge proceedings are concerned, they have ended in favour of the respondent and the Co-operative Tribunal has held that there was no loss to the Society and the respondent was not responsible for the actions of the other members in service. In fact, the Co-operative Tribunal has found that the surcharge action itself has been taken only to shield the Officials, who are in higher pedestal.

8. As regards the criminal case, a communication dated 06.06.2018 from the Superintendent of Police shows that there was no complaint against the respondent on the date of the order of suspension. The complaints were returned and they were not re-filed. Ultimately, the complaint was taken on file only in the year 2022. Therefore, both the grounds that were considered as grounds for keeping the respondent under suspension without allowing him to retire, no-longer exist. Therefore, the Writ Court had concluded that the order of suspension cannot be sustained.

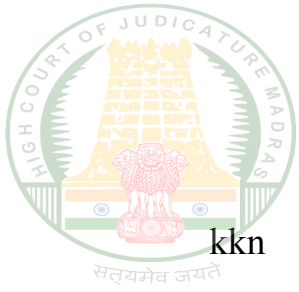


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9. No doubt, on the date when the order of suspension were made, surcharge proceedings were pending. The surcharge proceedings are not criminal in nature and once it is found that there was no financial loss to the Society because of the actions of the respondent, the suspension would become punitive. We are not for a moment doubting the competence / authority of the appellants to keep an employee under suspension after retirement but, there should be a strong reason to do so.

10. In the case on hand, as rightly observed by the learned single Judge, both the reasons that were assigned for keeping the employee under suspension were non-existent, on the date when the orders were pronounced in the writ petition. We are therefore, unable to fault the writ court for having reached the conclusion. This Writ Appeal fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellants will calculate and pay the retiral benefits of the respondent within a period of four months from the date of receipt of a copy of this order.



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WEB COPY

Index: No

Speaking order

Neutral Citation : No



W.A.No. 1247 of 2

(R.S.M., J.) (G.A.M., J.)

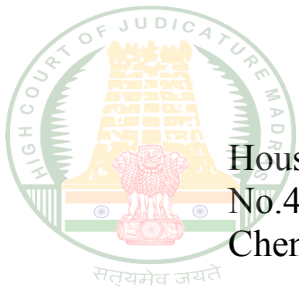
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To:

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