



W.P.(MD).No.554 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.554 of 2024
and WMP(MD).No.565 of 2024**

A.Elamathiyan

....Petitioner

Vs

1.The Regional Joint Registrar of Co-operatives
Ramanathapuram Region
Ramanathapuram

2.The Circle Deputy Registrar of Co-operatives
Paramakudi Circle
Paramakudi
Ramanathapuram District

3.The Administrator
NN 406
P.Kodikulam Primary Agricultural
Co-operatives Society
P.Kodikulam
Paramakudi Taluk
Ramanathapuram District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.5575/2021-C1 dated 31.10.2023 and quash the same and consequently directing the respondents to pay all the retirement monetary benefits with interest to the petitioner within the time stipulated by this Court.



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For Petitioner : Mr.Sricharan Rengarajan
Senior Counsel
For Mr.C.Jeganathan

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader

ORDER

The instant writ petition has been filed by a Secretary of a Co-operative Society challenging the order of removal from service passed by the first respondent herein.

2.The petitioner herein was placed under suspension on 13.07.2021 in contemplation of an enquiry into grave charges. The petitioner was issued with a charge memo on 08.04.2022. The petitioner has reached the age of superannuation on 09.04.2023. On 28.02.2023, the respondent herein had passed an order continuing the suspension of the writ petitioner and not permitted him to retire. Under the said order, the disbursement of the terminal benefits was also kept in abeyance.

3.After the date of superannuation, enquiry proceedings were continued and ultimately, the impugned dismissal order came to be passed on 31.10.2023. This order is put to challenge in the present writ petition.

4.The order of dismissal is challenged by the learned counsel for the writ petitioner on the following grounds:



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a)A charge memo has been issued by the first respondent in his individual capacity and not after convening the common cadre committee meeting.

b)The petitioner has attained the age of superannuation on 09.04.2023. There is no provision under the Common Cadre Service Rules for initiating or continuing the disciplinary proceedings after the date of attaining superannuation. He had further contended that the petitioner being a common cadre employee, he is not governed by the Byelaws of the Society. The petitioner also relied upon the Division Bench judgment of our High Court in ***W.A.Nos.2220 & 2466 of 2021(S.307, Muthukalipatti Primary Agricultural Co-operative Credit Ltd., Vs. V.Viswanathan and others)*** dated 28.09.2021 and the order passed in ***WP(MD).No.10304 of 2024 (X.Sahaya Thilakaraj Vs. The Joint Registrar of Co-operative Societies/Common Cadre Authority and others)*** dated 29.10.2024 in support of his contention.

5.Per contra, the learned Additional Advocate General appearing for the respondents herein, relying upon the Special Bylaws of Primary Agricultural Co-operative Credit Society Limited had contended that the Special Bylaws provide for retaining an employee in service after the date of retirement and to continue the disciplinary proceedings. He specifically relied upon Clause 31(4) of the Special Bylaws which provides for continuing the suspension order till the disposal of the disciplinary proceedings. He had



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further contended that an employee under suspension cannot be allowed to retire on attaining the age of superannuation. Therefore, when the Special Bylaws of the respondent Society provide for retaining an employee in service and to continue the departmental proceedings after retirement, the impugned charge memo cannot be attacked on the ground that it is without jurisdiction.

6.The learned Additional Advocate General had further contended that though the petitioner is a common cadre employee, the said Service Rules do not exclude the operation of the Special Bylaws especially when there is no contradiction between the common cadre service Rules and the Special Bylaws. Hence, he prayed for sustaining the order of removal from service.

7.I have considered the submissions made on either side and perused the material records.

8.The petitioner herein was appointed as a Secretary of the Co-operative Society on 31.03.1987. The Government of Tamil Nadu had published Tamil Nadu Primary Agricultural Co-operative Credit Societies Common Cadre Service Rules, 2019 on 12.02.2019. As per Rule 3(4), for the first three years from the date of constitution of the Common Cadre Service, the Joint Registrar of the Co-operative Societies of the region concerned shall be the Competent Authority for initiating disciplinary action as against the employee. From the fourth year onwards, the Committee consisting of four



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officers would form common cadre authority who will be the competent to initiate disciplinary proceedings. In the present case, the Rules having been framed on 12.02.2019, three years period had expired on 12.02.2022. Thereafter, only the committee consisting of four officials would form common cadre authority and they alone would be empowered to initiate disciplinary action as against the employee. In the present case, the charge memo has been issued to the writ petitioner on 08.04.2022 by the respondent herein in his individual capacity without convening the meeting of the common cadre authority. Therefore, the contention of the learned counsel for the writ petitioner that the very charge memo is without jurisdiction has to be sustained.

9.The learned counsel for the petitioner had further contended that the common cadre service rules do not provide for continuing the period of suspension beyond the date of superannuation or to continue the departmental proceedings after the date of superannuation. However, the learned Additional Advocate General had relied upon the Special Bylaws for continuing the disciplinary proceedings and not permitting the employee to retire from service.

10.The Hon'ble Division Bench in their judgment in ***W.A.Nos.2220 & 2466 of 2021(S.307, Muthukalipatti Primary Agricultural Co-operative Credit Ltd., Vs. V.Viswanathan and others)*** dated 28.09.2021 in paragraph



No.7 has held as follows:

“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 no where 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.”

11.The judgment of the Hon'ble Division Bench was followed by this Court in ***WP(MD).No.10304 of 2024 (X.Sahaya Thilakaraj Vs. The Joint***



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Registrar of Co-operative Societies Common Cadre Authority and others)

dated 29.10.2024.

12.In the present case, it is clear that the disciplinary proceedings having been continued beyond the date of superannuation and it has culminated in passing the impugned order of removal from service on 31.10.2023. When the petitioner has been absorbed into the common cadre service, the Special Bylaws of the concerned Co-operative Society will not have any power in the eye of law. The employee would be covered only by the Common Cadre Service Rules. In such circumstances, the continuation of the disciplinary proceedings beyond the date of superannuation and passing of the impugned order of removal from service are not legally sustainable.

13.In view of the above said deliberations, the order impugned in the writ petition is set aside and the respondents are directed to disburse the terminal benefits to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

14.With the above said observations, this writ petition stands allowed.
No costs. Consequently, connected miscellaneous petition is closed.

22.01.2025

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

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