



W.A.MD) No.1167 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 20.03.2025
Delivered on : 27.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)No.1167 of 2016
and
C.M.P(MD)No.7454 of 2016

The Special Officer,
Dindigul Central Co-operative Bank Limited,
Kootturavu Nagar,
Trichy Road,
Dindigul.

... Appellant/4th Respondent

-Vs-

1.G.Natarajan(Died)

2.The Registrar of Co-operative Societies,
Chennai-10.

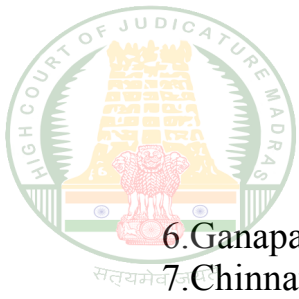
3.The Joint Registrar of Co-operatives,
Dindigul Region,
Dindigul.

4.The Deputy Registrar of Co-operative Societies,
Dindigul Region,
Dindigul.

...Respondents/Respondents 1 to 3

5.N.Usha

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6.Ganapathyappan @ Babu

7.Chinnathambi

(R5 to R7 are impleaded as LR's of the deceased 1st Respondent vide Court order dated 05.02.2025 in C.M.P(MD)Nos. 9694 to 9696 of 2017)

PRAYER: Writ Appeal filed under Clause XV of Letters of Patent Appeal, against the order of this Court dated 16.12.2014 made in W.P.No.5398 of 2011.

For Appellant	: Mr.D.Shanmugaraja Sethupathi
For R1	: Died
For R2 to R4	:Mr.D.Ghandhiraj, Spl. Govt. Pleader
For R5 to R7	: No appearance

JUDGMENT

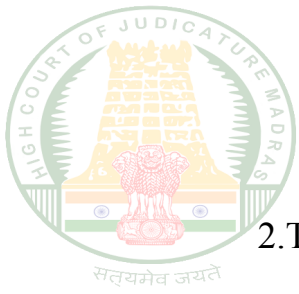
DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The appellant herein being the Special Officer of Dindigul Central Cooperative Bank Ltd, in the capacity as Disciplinary Authority, dismissed the first Respondent viz., Mr.Natarajan, former Assistant Manager/Branch Manager of Oddanchacharam Branch, vide proceedings, dated 10.01.2011. The said dismissal order was challenged in W.P(MD)No.5398 of 2011. The Learned Single Judge allowed the writ petition filed for issuance of Certiorarified Mandamus and quashed the impugned order of dismissal and directed the appellant to settle the retirement benefits within a period of four weeks by treating the writ petitioner has retired on 31.10.2005.

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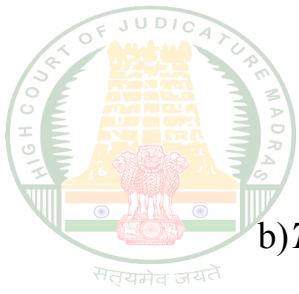
2.The learned single Judge, after recording that the writ petitioner attained superannuation on 31.10.2005, allowed to retire without prejudice to the Bank's right to take necessary further action in the disciplinary proceedings and pending disposal of disciplinary actions. For the show cause notice issued prior to his superannuation and the charge memo issued on 27.10.2005, enquiry was initiated belatedly on 16.06.2006 and concluded on 08.12.2006. After affording an opportunity, the final order was passed on 10.01.2011 dismissing him from service, held that:

i) the inordinate delay of 6 years in completing the disciplinary proceeds not satisfactorily explained.

ii) There is no rule to impose a punishment of dismissal from service after permitting the delinquent to retire without prejudice to the outcome of the disciplinary proceedings.

3.The Society, being aggrieved by the order of the learned single Judge, had preferred the *intra* Court appeal on the ground that the writ petition against the Co-operative Societies not maintainable in view of the Full Bench Judgements of this court rendered in

a) ***K.Marappan –vs- Deputy Registrar of Co-operative Society:*** (2006(4) CTC 689.



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b) *T.K.Anandasayanam –vs- Joint Registrar of Cooperative Societies,*

Vellore: 2007(5) CTC 1.

c) *P.Eswaramoorthy and others –vs- R.J.B. Leorai and others:* 2008(5)

MLJ 238.

d) *P.Manimaran –vs- The Joint Registrar/ Managing Director:* W.A (MD)

No: 431/2022 dated 29/04/2022.

4.The learned Counsel appearing for the appellant contended that, the delay in completing the disciplinary proceedings is to be attributed to the dialectic tactics of the first respondent/delinquent. He cannot be allowed to take advantage of his own fault. Against the order of dismissal, the delinquent have the right of appeal and revision under the Co-operative Societies Act. Instead of seeking redressal as per statute, the Writ Petition is filed before the High Court. Hence, the learned single judge ought to have dismissed the Writ Petition at the threshold as not maintainable.

5.The Writ petitioner/ delinquent had caused financial loss to the Society to a tune of Rs.23,00,000/-(Rupees Twenty three lakhs). The same was proved in the enquiry. While so, the dismissal of the delinquent for the proven misconduct of grave nature ought not to have been quashed by the learned single Judge stating

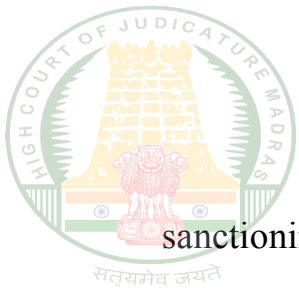


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there is no rule empowers the Special Officer to continue the disciplinary proceedings after allowing the delinquent to retire. The Learned single Judge failed to note that the permission to retire was with a caveat and without prejudice to continue the disciplinary proceedings. The Rule 19 (2) of the Special by-law of the Bank, permits continuation of the disciplinary proceedings initiated against an employee to continue, even after his retirement in the same manner, as if the employee continue in service.

6.The first respondent died, pending appeal. Therefore, his legal heirs were brought on record and arrayed as Respondents 5 to 7.

7.On behalf of the respondents, it was contended that, the initiation of the disciplinary proceedings few days prior to the date of superannuation itself condemnable and act of victimisation. The charge memo issued on 27.10.2005 for the alleged commissions and omissions occurred between the year 2001 to 2003, charge memo was issued on 27.10.2005, four days prior to the date of retirement. The writ petitioner was allowed to retire on attaining his superannuation. The enquiry proceedings went on for years together and at last the impugned order was passed on 10.01.2011 dismissing the writ petitioner with effect from 31.10.2005. The main charge against the writ petitioner is, in respect of irregularity in



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sanctioning Cooking Gas Loans and missing of vouchers, leading to loss for the Bank. Whereas, the Government has waived the cooking gas loans completely in the year 2008. Hence, there is no pecuniary loss to the Bank in any manner.

8.The writ petition, against the Co-operative Society, is still maintainable, if there is special circumstances which warrant exercising power under Article 226 of the Constitution. Alternate remedy cannot be bar, if there is a grave violation of fundamental right. In this case, the writ petitioner been deprived of his service benefit for about 6 years, in view of the pendency of the enquiry proceedings and another 13 years to till date, in view of the pendency of writ petition and writ appeal. The writ petitioner is dead and his legal heirs are forced to defend the appeal, despite the writ petitioner succeeded before the learned single Judge.

9.Regarding maintainability of writ petition against the Co-operative Society, it is profitable to refer the Judgment of this Court rendered by 5 Learned Judges in ***K.Marappan –vs- Deputy Registrar of Co-operative Societies cited supra***. The Bench after a detailed discussion laid down the following preposition:

“From the above discussion, the following propositions emerge:

(i)If a particular co-operative society can be characterised as



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a “State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a Society in violation of the bye-laws can be corrected by way of Writ Petition.

(ii)Applying the tests in *Ajay Hasia* it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;

.....

(iii)Even if a society cannot be characterised as a “State” within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv)A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such



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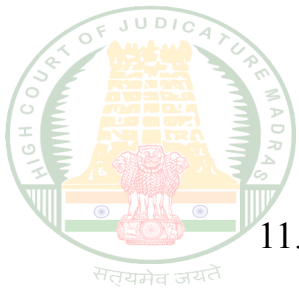
private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v)Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a “State” a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi)The bye-laws made by a co-operative society registered under the Tamil nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a “State’ the service conditions of its employees goverened by its bye-laws cannot be enforced through a Writ Petition.

(vii)In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.”

10.Following the dictum in *Marappan case*, this Court in ***Nazarath Urban Co-operative Bank Ltd-vs- Deva Anbu*** : reported in **2007 (3) CTC 17**, held that, “it is settled principle that whenever there is a violation of of Fundamental Rights, the question of seeking alternative remedy is not required and in fact, it was repeatedly ruled by the Court of justice that driving a party to seek alternate remedy is only a rule of self-imposed restriction and not an absolute bar and depends upon the facts of each case.”



11.In ***Captain Paul Antony –vs- Bharat Gold Mines Ltd: 1999 (2) CTC***

579, when a Security Officer was placed under suspension without subsistence allowance, the Hon'ble Supreme Court observed that, “non pay-ment of subsistence allowance is a slow poisoning and an inhuman act, which has an unpropitious effect on the life of an employee”.

12.The learned single Judge, in this case, has held that the Special Officer is not empowered to dismiss the writ petitioner after allowing him to retire on attaining superannuation. The learned counsel appearing for the appellant/Special Officer claims that the writ petitioner was permitted to retire only on condition that it is subject to the outcome of the enquiry proceedings. The Special By-law of the Bank permits the Society to continue the disciplinary proceedings even after the employee attains superannuation. For the said argument, By-law 19 (2) of the Bank is relied. The said by-law reads as below:-

“19 KINDS OF PENALTIES:

....

(2)The Disciplinary proceedings instituted against an employee, while he was in service, shall be deemed o be proceedings under this special law, even after his retirement, and be continued and concluded by the competent authority in the same manner as if the employee had continued in service. In



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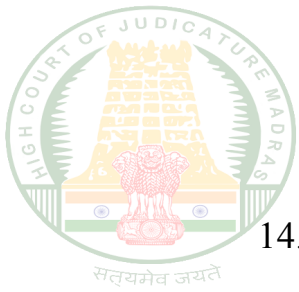
the event of any such disciplinary proceedings having been initiated and if the bank has reason to believe that the disciplinary proceedings will result in the removal or dismissal of the employee from service, the bank shall place the employee under suspension. In such cases, the employee is not eligible for payment of subsistence allowance. The bank also, shall not make payment of the terminal benefits like gratuity etc., payable to the employee until the disciplinary proceedings are finally conclude.”

13.A careful reading of this by-law empowers the competent authority to continue with the disciplinary proceeding even after retirement of the employee, if:-

a) The bank has a reason to believe that the disciplinary proceedings will result in removal or dismissal of the employee from service, the bank shall place the employee under suspension.

b) In such case, the employee is not eligible for payment of subsistence allowance.

c) The bank also shall not make payment of the terminal benefits like gratuity etc., payable to the employee until the disciplinary proceedings are finally concluded.

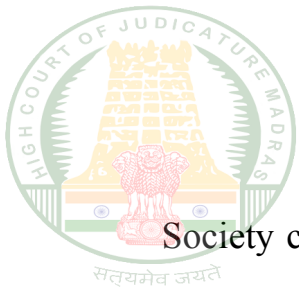


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14. In the case in hand, the competent authority has not recorded his reason to believe that the Disciplinary Proceedings will result in removal or dismissal of the employee from service. He had not placed the employee under suspension, which is the pre requisite to exercise the power under by-law 19(2). However the terminal benefits of the employee been withheld in toto, after allowing to retire, with condition it is subject to the outcome of the enquiry proceedings.

15. The plain reading of By-law 19(2) clearly indicates that there is a power to the competent authority to continue the disciplinary proceeding initiated prior to retirement. However, if there is a reason that it will result in removal or dismissal in service, such punishment cannot be imposed unless the employee placed under suspension. After allowing to retire, the punishment of removal or dismissal cannot be imposed.

16. The enquiry against the writ petitioner continued on the strength of the condition imposed in the relieving order dated 31.10.2005. One cannot find any illegality in it. However, for imposing the major punishment of dismissal, first of all the employee must be in service. That is the reason, the By-law mandates that the employee must have been put under suspension till the completion of disciplinary proceedings. Without placing the employee under suspension, the



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Society cannot impose the punishment of dismissal on its former employee, who had been permitted to retire. Therefore, the order of dismissal from service is in violation of by-law 19(2), hence without authority.

17.The gross violation of the by-law and the denial of retirement benefit is a serious violation of fundamental right of the employee, which affect his livelihood. Therefore, we hold that the facts and circumstances of this case fully justifies the exercise of writ jurisdiction. The judgment of the learned single Judge in W.P(MD)No.5398 of 20011 impugned in this Appeal deserve to be upheld for the reasons stated.

18.Accordingly, the Writ Appeal stands dismissed. The order dated 16.12.2014 passed in W.P(MD)No.5398 of 2011 stands confirmed. No costs. Consequently, the connected miscellaneous petition is also closed.

[G.J., J.] & [R.P., J.]

27.03.2025

NCC : Yes / No

Index : Yes / No

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To

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Predelivery Judgment made in
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and
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