



W.P.(MD) No.14963 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.14963 of 2017

and

WMP(MD) No.11787 of 2017

S.Vijayalekshmi

.. Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Thuckalay Circle,
Thuckalay,
Kanyakumari District.

2.Kandanvilai Primary Agricultural Cooperative
Credit Society Ltd.1827,
Kandanvilai Post,
Kanyakumari District.
Rep.by its President.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for the records relating to the impugned proceedings of the 1st respondent in Tha.Va 1/2017 dated 29.06.2017 and quash the same as illegal insofar as the petitioner is concerned.



W.P.(MD) No.14963 of 2017

For Petitioner : Mr.M.Jerin Mathew
Advocate

For R1 & R2 : Mr.J.K.Jeyaseelan
Government Advocate

ORDER

The challenge in this writ petition is an order passed by the 1st respondent under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983.

2. The learned counsel for the petitioner would submit that the petitioner was employed with the 2nd respondent and had superannuated in the year 2016. However, by the impugned proceedings dated 29.06.2017, the petitioner was mulled with the liability on the allegations that the petitioner along with nine others had caused loss to the Society.

3. The learned counsel for the petitioner would further submit that the notice of enquiry under Section 82 of the 'Tamil Nadu Cooperative Societies Act', 1983 (hereinafter referred as 'Act') had been referred to the impugned proceedings which had not been served upon the petitioner. Therefore, the proceedings under Section 87 of the Act is under gross violation of Principles of Natural Justice.



W.P.(MD) No.14963 of 2017

WEB COPY

4. The learned counsel for the petitioner further heavily relied upon the Full Bench Judgment of this Court reported in **S.Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai Region, Madurai { [2015] (4) CTC}** and contended that the proceedings initiated against the petitioner after his retirement is *non est* in law.

5. The learned counsel for the petitioner had also placed reliance on the judgment of a learned Single Judge made in WP(MD).No.13285 of 2021 dated 26.02.2024 to drive home his contention that the Full Bench of this Court had held that once the employee had retired, no proceedings could be initiated against one.

6. The learned counsel for the petitioner would further submit that the proceedings impugned herein issued after superannuation of the petitioner is bad in law and therefore, is liable to be set aside.

7. On the contrary, Mr.J.K.Jeyaseelan, learned Government Advocate for the respondents would contend that the petitioner had misconstrued the Full Bench judgment of this Court.

8. The learned Government Advocate would submit that the Full Bench had answered two questions, the first question relates to disciplinary proceedings and the second question relates to the surcharge



W.P.(MD) No.14963 of 2017

proceedings.

WEB COPY

9. The learned Government Advocate would further submit that the Full Bench had only answered that when the disciplinary proceedings have been initiated after the superannuation, the same was bad but on the other hand the surcharge proceedings under Section 87 of the Act was initiated, the Full Bench had held that the same is not penal in nature and if it is established that the employee had caused loss to the society, then the same could be recovered in the manner known to law from such employee.

10. The learned Government Advocate further placed reliance upon a judgment of the learned Single Judge in WP(MD).No.17308 of 2023 dated 03.11.2023 and contend that the learned Single Judge following the Full Bench Judgment had held that the surcharge proceedings can be proceeded with and not the disciplinary proceedings. But on the facts of the said case held that the conditional order of retirement was bad in law and had directed completion of both the disciplinary proceedings and the surcharge proceedings within a time frame.



W.P.(MD) No.14963 of 2017

WEB COPY

11. The learned Government Advocate further relied upon two orders of the learned Single Judge made in WP(MD).No.13192 of 2014 dated 21.08.2017 and WP(MD).No.5882 of 2015 dated 09.08.2017, to record his contention, the writ petition against the proceedings under Section 87 of the Act, is not maintainable. Hence, he prays this Court to dismiss the writ petition.

12. I have considered the rival submissions of the learned counsel on either side.

13. It is an admitted case that the petitioner had superannuated prior to the orders impugned herein. It is to be noted that the proceedings under Section 87 of the Act were also initiated even before the petitioner attained the age of superannuation.

14. The Full Bench of this Court after analysing the various issues, it answered the questions that had been referred to it and for better appreciation the same is extracted hereunder:-

30. Answer to the first question referred to this Bench:

Under the Tamil Nadu Cooperative Societies Act, 1983, once an employee retired from service, there could be no authority vested with the employer for continuing any disciplinary proceeding, in the absence of relevant service Rules permitting the employer to continue the disciplinary proceeding.



WEB COPY

In other words, if there is no service Rules or bye-law of the society empowering the employer to continue the departmental proceeding, the employer, would have no authority to continue the departmental proceeding after the retirement of the employee.

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 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.”

15. The answer to the first question was that if there was no Service Rule or Bye-Law empowering the employer to continue the departmental proceedings after the superannuation of the employee then the employer had no authority to continue the departmental proceeding.

16. In answer to the second question, the Full Bench had held that [Section 87](#) proceedings is not penal in nature and if there is an admission or a finding of fact that the employee has caused loss to the society, the same could be recovered in the manner known to law and held that the



W.P.(MD) No.14963 of 2017

pendency of the proceedings under Section 87 of the Act cannot empower the disciplinary proceedings to proceed against that employee after his superannuation. Hence, in my view, the Full Bench of this Court had categorically held that surcharge proceedings can be proceeded even after the retirement of the employee.

17. The interpretation that has been sought to be given by the learned counsel for the petitioner in respect of the answer to the second question is not sustainable. The answer to question number two would have to be understood by also taking into account, the answer to the first question and a conjoint reading of the same would indicate that employer would not have any authority to proceed with the disciplinary proceedings which is in penal nature if the bye-law of the Society does not empower the employer to continue the disciplinary proceedings after the date of superannuation.

18. Section 87 proceedings of the Act can be proceeded for recovery of the loss caused by the employee but such proceedings will also not entitle the employer to proceed on the disciplinary side after the superannuation of the employee.

19. The judgment relied upon by the learned counsel for the



W.P.(MD) No.14963 of 2017

petitioner which has been made by the learned single Judges of this Court relates to the issue of the disciplinary proceeding and not surcharge proceedings. Hence, the said judgment cannot be made applicable to the facts of the case.

20. The learned single Judge judgment relied upon by the respondent would also indicate that the writ petition against the proceedings of Section 87 of the Act is not maintainable. The reason for which it was held to be not maintainable was that there was an efficacious alternate remedy under Section 87 proceedings of the Act.

21. In such view of the matter, I find no necessity to interfere with the orders impugned in this writ petition.

22. In fine, the writ petition is dismissed. No costs. Connected writ miscellaneous petition is closed.

08.01.2025

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



WEB COPY



W.P.(MD) No.14963 of 2017

To

- 1.The Deputy Registrar of Cooperative Societies,
Thuckalay Circle,
Thuckalay,
Kanyakumari District.
- 2.Kandanvilai Primary Agricultural Cooperative
Credit Society Ltd.1827,
Kandanvilai Post,
Kanyakumari District.
Rep.by its President.

K.KUMARESH BABU, J.



WEB COPY



W.P.(MD) No.14963 of 2017

nst

W.P.(MD) No.14963 of 2017
and
WMP(MD) No.11787 of 2017

Dated: 08.01.2025