



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.20064 of 2017

and

W.M.P.(MD) Nos.16323 of 2017 and 849 and 1005 of 2018

R.Rajasekaran

... Petitioner

/vs./

1.The Director of Handloom and Textiles,
Handloom and Textiles Department,
Kuralagam II Floor,
Chennai.

2.The Assistant Director / surcharge proceedings Officer,
Handloom and Textiles Department,
Madurai.

3.K.Natarajan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records relating to the impugned show cause notice issued by the 2nd Respondent in his proceedings Na.Ka.No. 2136/2016/G(1) dated 07.06.2017 and consequent initiation of surcharge enquiry



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proceedings by the 2nd Respondent in Tha.Na.2/2017/G based on the enquiry notice dated 29.08.2017 and quash the same in so far as the Petitioner is concerned.

For Petitioner : Mr.B.Prahalad Ravi

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The writ petition has been filed challenging the show cause notice issued by the second respondent in his proceedings in Na.Ka.No.2136/2016/G(1) dated 07.06.2017 and the initiation of surcharge enquiry proceedings made by the second respondent in Tha.Na.2/2017/G based on the enquiry notice dated 29.08.2017.

2. The primordial contention raised by the petitioner is that the surcharge proceedings had been initiated after the superannuation of the petitioner and that by the judgment in *S.Andiyannan Vs. The Joint Registrar, Cooperative Societies, Madurai Region, Madurai* reported in *2015 (4) CTC 1*, any proceedings initiated against an employee after the superannuation would be non-



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est in law. This Court had an opportunity to consider the very same claim in a writ petition in W.P.(MD) No.14963 of 2017 and by order dated 08.01.2025 had held that the Full Bench Judgment can only be applied to the disciplinary proceedings and not to the proceedings under Section 87 of the Act.

3. For better appreciation, relevant paragraphs of the said judgment are extracted herein below:-

“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. 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



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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 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



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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.”



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4. In view of the aforesaid judgment, I do not find any reason to interfere with the order impugned in this writ petition and accordingly, the Writ Petition stands dismissed. Considering the fact that the proceedings have been initiated long back, the respondents are directed to conclude the proceedings within a period of six months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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09.01.2025

To

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K.KUMARESH BABU, J.

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