**(2014) 02 MAD CK 0114**

**In the Madras High Court**

**Case No :** Writ Petition No. 21776 of 2009

E. Chelladurai APPELLANT

Vs

The Joint Registrar of Cooperative Societies RESPONDENT

**Date of Decision :** 17-02-2014

**Acts Referred:**

Tamil Nadu Co-operative Societies Act, 1983 — Section 81, 82

**Citation :** (2014) LabIC 3555

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

# Judgement

T. Raja, J.—The petitioner has filed the instant Writ Petition to quash the order of the 3rd respondent, Special Officer/President, Mannargudi Co-operative Primary Agricultural & Rural Development Bank Limited (O.M. 209), Mannargudi, Thiruvarur District, relating to Charge Memo in Na. Ka. No. 1/2000.Tha., dated 25.04.2000 and consequently, to direct the respondents to settle the retirement benefits namely, DCRG, PF, Arrears of Salary, Earned Leave, etc., to the petitioner with interest @ 24% per annum with effect from 01.05.2000 till the date of realization. Mr. K. Raja, learned counsel appearing for the petitioner submitted that the petitioner was appointed as Supervisor in the year 1971 and promoted as Secretary in the year 1997. While so, he was placed under suspension on 12.04.2000, thereafter, he attained the age of superannuation on 30.04.2000. Finally, on the date of retirement, he was permitted to retire from service without prejudice to the disciplinary proceedings. Subsequently, he was directed to submit his explanation, accordingly, the petitioner submitted his explanation on 28.05.2003. Thereafter, the petitioner appeared in the enquiry held on 28.05.2003, 24.04.2006 and 17.02.2009.

2. The learned counsel for the petitioner further submitted that even though nine years are over, there is no progress in the disciplinary proceedings, and the respondents have not completed the enquiry, resultantly, his retirement benefits namely, DCRG, PF, Arrears of Salary, Earned Leave, etc., were not disbursed to

him. Further, he submitted that the petitioner has sent a representation dated 10.03.2009 to the respondents, seeking retirement benefits, but, the same was not considered by the respondents. Hence, this petition has been filed by the petitioner, as stated supra.

3. The learned counsel for the petitioner adding more to his submission stated that after the date of retirement, the respondents have no jurisdiction to proceed with the disciplinary proceedings. He further added that the issues raised in the present writ petition are, whether an employee working in the Co-operative Society, after reaching the age of superannuation, was permitted to retire from service without prejudice to the pending of the disciplinary proceedings, Can the disciplinary proceedings be allowed to continue against him? If so, whether there is any provision in the service rules or any bye-laws to continue the disciplinary proceedings, after attaining the age of superannuation?

4. To lend support his contention, the learned counsel for the petitioner relied on the Order of this Court in D. Kotteeswaran v. Thiruvannamalai District Central Co-operative Bank Limited V.T.738 rep. by its Special Officer, 9, 6th Street, Gandhi Nagar, Thiruvannamalai District and three others in W.P. No. 20847 of 2004 dated 31.12.2004, wherein it is held that ''in the absence of power to retain a delinquent Officer in service for the purpose of departmental proceedings, merely because the said delinquent officer was allowed to retire without prejudice to the enquiry, a power which is not available to the respondents cannot be conferred by such resolution.'' On that basis, he further pleaded that when there is no rule or regulation which empowers the disciplinary authority to continue the disciplinary proceedings, after attaining the age of superannuation, particularly, when the Master-Servant relationship is severed, the impugned order is without jurisdiction, accordingly, he pleaded, the present impugned order passed by the third respondent, is liable to be set aside, for the sole reason that he has no authority or power to retain the petitioner for continuation of departmental proceedings.

5. In this context, he also placed reliance on another decision of this Court in N. Kunnai Gowder Vs. The Coimbatore District Co-op. Milk Producers'' Union Ltd., , wherein this Court has held that "the disciplinary proceedings, after attaining the age of superannuation, cannot be allowed to continue". Further, this Court has held therein that "there has to be a specific provision of law or regulation or a by-law governing the service conditions of the person in question for continuing a departmental enquiry, initiated before the date of superannuation, even after the employee had retired from service. Without such a provision being available, there cannot be an employer - employee relationship surviving after the employee retires from service. Therefore, continuing the enquiry proceedings or conducting an action against the person after his retirement from service cannot be sustained in the eye of law."

6. Continuing his argument, the learned counsel for the petitioner restated the principle that the impugned order issued by the 3rd respondent, after the date of

retirement, has to be set aside as the respondents have no jurisdiction to proceed with the departmental proceedings, with further direction to the 3rd respondent to pay the retirement benefits namely, DCRG, PF, Arrears of Salary, Earned Leave, etc.

7. Finally, the learned counsel for the petitioner has produced the following judgments, in support of his prayer:

(1) G. Manoharan Vs. The Registrar of Cooperative Societies, The Addl. Registrar of Cooperative Societies (Credit), Chairman, Common Cadre Authority and Villupuram District Central Cooperative Bank,

(2) Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others,

(3) P. Thangavel Vs. The Chairman, Common Cadre Committee/Joint Registrar of Cooperative Societies .

8. Per contra, Ms. T.P. Savitha, learned Government Advocate for the respondents 1 and 2 contended that while the petitioner was serving as Secretary in the 3rd respondent Society, not only the departmental proceedings has been initiated against the petitioner but also surcharge proceedings and criminal proceedings were initiated, because, when the petitioner was serving as Secretary, for his acts of commissions and omissions, on the basis of records available in the institution, enquiry was conducted. However, when he reached the age of superannuation on 30.04.2000, he was permitted to retire from service without prejudice to the disciplinary proceedings, however enquiry under Section 81 of the Co-operative Societies Act was ordered on 28.12.1999, therefore, once the enquiry is commenced, it must be allowed to have a logical conclusion, otherwise, the very purpose of instituting an enquiry will be defeated to the detriment of the institution. Moreover, such leniency will give a long rope to the erring staff of the institution, because such a course has not been contemplated in the Co-operative Act and Rules and there is no provision in the statute enabling the institution to stop enquiry in the midway on the sole ground of retirement of the incumbent. Hence, she pleaded, this Court, by accepting the arguments advanced by the learned counsel for the petitioner that there is no provision in the Act or in the bylaws or in the Rule, should not allow the prayer in favour of the petitioner. Further, she argued that such a course should not be contemplated, for the simple reason that the departmental proceedings has not only been initiated on 25.04.2000 against the petitioner before his retirement, even the surcharge proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, were initiated on 28-12-1999. Moreover, the Society also thought it fit to initiate the criminal proceedings because the petitioner has involved in misappropriation of funds to an extent of Rs. 4,67,000/-. In fact, in one of the cases, the surcharge proceedings were concluded and orders were passed on 18.03.2006, for recovery of Rs. 41,848/- and Rs. 2,16,794/- from the petitioner. When the petitioner was found guilty for the huge loss of money, he is liable to pay the amount. While so, when the liability on the petitioner exceeds his claim

 

to which he is asking for the release of service benefits, the question of releasing his retirement benefits does not arise.

9. The learned Government Advocate further submitted that the petitioner has applied to release a sum of Rs. 2,92,403/- from the head of Gratuity. But, the balance amount is only Rs. 38,167/-. Similarly, a sum of Rs. 1,82,415/- was paid to the Provident Funds. Now, the petitioner cannot ask for the release of entire amount. If the petitioner was permitted to receive the entire amount on the basis of any misunderstanding of the rule, in view of the fact that the surcharge proceedings initiated got successfully computed against the petitioner holding him guilty, the 3rd respondent Society may not be in a position to recover the said amount, for, it would be very difficult to follow up the recovery proceedings once he is allowed to receive the said amount. When the liability of the petitioner to the Bank exceeds his claim in retirement benefits, no further direction can be given for the disbursement of pensionary benefits to the petitioner. On that basis, the learned counsel for the respondents 1 and 2 sought for the dismissal of the Writ Petition.

10. Now, the issue is as to whether the Disciplinary Proceedings initiated against an employee, who was working in a Co-operative Society, after being permitted to retire from service, can be allowed to continue in the absence of power to retain the delinquent employee in service for the purpose of the disciplinary proceedings.

11. In the present case, the petitioner, who worked as Secretary in the 3rd respondent Society, on reaching the age of superannuation on 30.04.2000, was facing departmental proceedings, before he reached the age of superannuation. The material on records show that the petitioner was placed under suspension on 12.04.2000 only 8 days before his retirement. He also issued with a Charge Memo on 25.04.2000 only 5 days before his retirement. The 3rd respondent Society has initiated departmental proceedings against him. Unfortunately, on 30.04.2000, he was permitted to retire without prejudice to the disciplinary proceedings. Therefore, the question is whether the 3rd respondent Society is entitled to continue departmental proceedings against the petitioner even after his retirement and can be held guilty on the charges issued prior to the date of retirement?.

12. The Apex Court, while considering a similar and identical issue in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, ruled that if there is no provision made for continuation of disciplinary proceedings after superannuation or for deducting any amount from the Provident Funds consequent to any misconduct determined in the departmental enquiry, it must be held that the Corporation/Society has no legal authority to make any reduction in the retrial benefits of the person concerned or for conducting disciplinary enquiry after retirement. Holding further, the Apex Court ruled that in the absence of any power/authority, it must be held that the enquiry had lapsed and the individual is entitled to full retrial benefits on retirement.

 

13. In this context, it is relevant to extract Para. 6 of the judgment in N. Kunnai Gowder Vs. The Coimbatore District Co-op. Milk Producers'' Union Ltd., , as follows:

"6. A departmental proceeding can continue so long as the employee is in service. In the event, a disciplinary proceeding is kept pending by the employer, the employee cannot be made to retire. In the instant case, no rule has been brought to our notice providing for continuation of such proceeding despite permitting the employee concerned to retire. There has to be a specific provision of law or regulation or a by-law governing the service conditions of the person in question for continuing a departmental enquiry, initiated before the date of superannuation, even after the employee had retired from service. Without such a provision being available, there cannot be an employer-employee relationship surviving after the employee retires from service. Therefore, continuing the enquiry proceedings or conducting an action against the person after his retirement from service cannot be sustained in the eye of law. 7.1. Our view is also supported with the following decisions."

14. Yet another decision of this Court in G. Manoharan Vs. The Registrar of Cooperative Societies, The Addl. Registrar of Cooperative Societies (Credit), Chairman, Common Cadre Authority and Villupuram District Central Cooperative Bank, , wherein, by referring to Bhagirathi Jena''s Case (referred supra), it is held as hereunder:

"16. In Bhagirathi Jena v. Board of Directors, O.S.F.C. and Ors., the Supreme Court has held as follows:

"No specific provision exists in the Orissa Financial State Corporation Staff Regulations, 1975, for deducting any amount from the provident fund consequent to any misconduct determined in departmental enquiry, nor is there any provision for continuance of departmental enquiry after superannuation. In the absence of any such provisions, it must be held that the respondent-Corporation had no legal authority to make any reduction in the appellant''s retiral benefits. There is also no provision for conducting a disciplinary enquiry after the appellant''s retirement, nor is there any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing departmental enquiry even for the purpose of imposing any reduction in retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits.

17. Following the above decision, a learned single Judge of the High Court of Madhya Pradesh in Radheshyam Khichrolia and Another Vs. Madhya Pradesh Co-operative Marketing Federation Ltd. and Others, , has held, that continuance of the departmental enquiry after their superannuation was not valid, as there were no service rules providing for it. The High Court upheld their plea and allowed

their petitions, quashing the punishment in the one case and the enquiry in the other and directed their retiral benefits be paid to them.

18. Similarly, this Court has held that there has to be a specific provision of law or regulation or a by-law governing the service conditions of the person in question for continuing a departmental enquiry, initiated before the date of superannuation, even after the employee had retired from service. Without such a provision being available, there cannot be an employer-employee relationship surviving after the employee retires from service. Therefore, continuing the enquiry proceedings or conducting an action against the person after his retirement from service cannot be sustained in the eye of law. Any punishment sought to be imposed thereafter, including non-payment of retirement benefits or recovery of amounts therefrom, cannot be held to be valid. This position of law has been followed by the learned Judges of this Court in their decisions in W.P. No. 30222 of 2003, dated 16.2.2004, in W.P. No. 21372 of 2003, dated 24.11.2003 and in W.P. No. 36027 of 2002 and W.P. No. 31151 of 2003, dated 15.3.2005. Further, a Division Bench of this Court in W.A. Nos. 3055 to 3058 of 2003 had confirmed the legal position as stated in the various decisions of this Court."

15. One another decision of this Court in D. Thiagarajan v. The Managing Director, Tamil Nadu Adi Dravidar Housing and Development Corporation Limited (TAHDCO), Tamil Nadu Housing Board Shopping Complex, Thirumangalam, Anna Nagar (West), Chennai-101 in W.P. No. 17895 of 2013, dated 04.07.2013, also supports the contention of the petitioner. In view of the legal position, it may be mentioned that the judgments relied on by the learned counsel for the petitioner are directly applicable to this Case. When there is no provision either in the Co-operative Societies Act or Rules framed thereunder or By-laws to initiate or to continue departmental proceedings even after the retirement of the petitioner, this Court has no hesitation to interfere with the impugned order. Accordingly, the impugned order passed against the petitioner to continue the departmental proceedings is hereby set aside. However, when the petitioner has sought to release the retiral benefits, by taking note of the fact that the respondents have already disbursed the retiral benefits to the petitioner from Gratuity and DCRG and they have retained the Gratuity and PF amount due and in view of the fact that the surcharge proceedings against the petitioner have been concluded against him finding him guilty, this Court is unable to agree with the second part of the prayer. However, it is made clear that only when the Civil Miscellaneous Appeal filed against the surcharge proceedings is disposed of, the 3rd respondent Society shall release the amount, if he succeeds in this Civil Miscellaneous Appeal. Inasmuch as the 3rd respondent Society is not legally entitled to retain the Gratuity and PF amount due, this Court hereby directs the 3rd respondent to adjust the liability namely, a sum of Rs. 2,58,642/- with the pensionary benefits, for the reason mentioned above. Since the 2nd respondent/Deputy Registrar of Cooperative Societies, Kasukara Street, Mannargudi, Tiruvarur District, has passed Surcharge Orders under Section 82 of the Co-operative Societies Act,

1983, on 15.09.2006 and 18.03.2006 for the recovery of sums of Rs. 41,848/- and Rs. 2,16,794/-, respectively, from the petitioner, if any balance amount is available, after the above adjustment, the same shall be disbursed to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.