(2007) 10 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 7672 of 2006 and WMP. No. 8436 of 2006

M.K.S. Balasubramanian APPELLANT

Vs

The Kancheepuram Central Cooperative Bank Limited RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Citation : (2007) 10 MAD CK 0025

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : P. Anbarasan, for the Appellant; G. Thilagavathi, for the Respondent

Judgement

M. Chockalingam, J.—Seeking to issue a writ of Certiorari to quash the charge memo dated 31.3.2005 issued to the petitioner by the

respondent bank and also for further direction to pay the retirement benefits, the petitioner has brought forth this writ petition.

2. Affidavit in support of the petition and counter affidavit are perused.

3. The Court heard the learned Counsel on either side.

4. The case of the petitioner is that the petitioner joined the Kancheepuram Central Cooperative Bank Limited as a Clerk in the year 1963, that he

was working at different branches of the Bank at Tiruthani, Kunrathur and Porur respectively, that he was promoted as Supervisor and then as

Assistant Manager, that he retired from service on 31.6.2006 after the service of 42 years. A charge memo was served upon him on 29.7.2004

stating that he failed to discharge his duties on the ground that two loans became over due and he failed to collect the same. The petitioner

tendered his explanation on 21.2.2005 indicating that in the case of one loan where the action was initiated, the borrower filed a writ petition, initiated suit proceedings and prevented the statutory action for recovery. Just before his retirement, that was on 23.3.2005, a charge memo which

is the subject matter of challenge, was served upon him alleging that he made acceptance of payment of Rs. 1,83,669/- given by the borrower by

name one Mr. Vaithilingam on 28.6.2002 under one time settlement scheme and the petitioner has put forth his explanation and while the matter

stood thus, he retired from service on 31.3.2005 without prejudice to the disciplinary action taken against him. Under such circumstances, the writ

petition has been brought forth to quash the charge memo. Further once he retired, there cannot be legal impediment for giving the retirement

benefits for which a direction has got to be given to the respondent bank.

5. Arguing for the petitioner, learned Counsel would submit that a charge memo has been served on him on 23.3.2005 which relates to acceptance

of payment of Rs. 1,83,659/- from the borrower on 28.6.2002 under one time settlement scheme. The petitioner immediately on receipt of the

said payment, forwarded the application to the respondent for the purpose of approval on 28.6.2002 itself. The rest of the payment was received

subsequently on 28.9.2002 and before that time, he was actually transferred from Kunrathur to Porur on 5.8.2002. Apart from this, the order of

rejection of the said application stating that the borrower Mr. Vaithilingam was not entitled for the benefit of one time settlement was issued by the

bank to the said borrower on 18.9.2002. Under such circumstances, he has simply forwarded the proposal for one time settlement to the

respondent and thus he was in no way liable or responsible for one time settlement at all. Learned Counsel would further add that in the instant

case, pending the charge memo, he retired from service on 31.3.2005. Once he was allowed to retire, no question of proceeding the disciplinary

action further without any legal sanction and that too when there is no specific provision or rules under the Cooperative Societies Act to proceed

with the disciplinary proceedings. In support of his contention, he has relied on the decision of this Court in W.A. No. 4108 of 2003 and hence the

proceedings must be quashed. Learned Counsel would further add that there is no impediment on the part of the bank in disbursing the retirement

benefits, pending disciplinary proceedings. Under such circumstances the charge memo has got to be quashed and the writ petition has to be allowed

6. Heard the learned Counsel for the respondent. According to the respondent, in the instant case, it is true that the petitioner has forwarded one

time settlement proposal along with the 1/4th amount received from the borrower on 28.6.2002. Even before that he has issued a communication

to the borrower on 20.5.2002. A reading of the said communication would clearly indicate that the communication was addressed to the borrower

pursuant to the G.O. 70 that the borrower is entitled to have the one time settlement and therefore, if he makes the payment, the entire transaction

would be over and thus the communication itself was sent without any authority. Added further on the strength of the same, he has received 1/4th

of the amount from the borrower, pursuant to the said G.O. and he has also forwarded the same and thus it was the act done by him without any

power whatsoever. Under such circumstances, the charge memo came to be issued and proceedings were pending and hence it has got to be

proceeded with. Nextly, the contention put forth by the learned Counsel for the petitioner that without any rule or provision under the Cooperative

Societies Act, the disciplinary proceedings cannot be proceeded with against the petitioner after retirement on superannuation, cannot be

countenanced for the reason that even before he retired on superannuation, rules have been framed and pursuant to the rules, disciplinary

proceedings can be proceeded with and it cannot be quashed. Learned Counsel for the respondent would further add that even the rules framed

for continuation of disciplinary proceedings, despite the retirement of the delinquent, was challenged in a writ petition and it is pending. But, at the

same time ,it has got to be awaited till the disposal of the said writ petition. If this writ petition is ordered and proceedings are quashed and further

a direction is also issued for payment of retirement benefits, the bank cannot have any remedy to recover its money and there will be a loss to the

Institution and hence it should not be allowed. Under such circumstances, the writ petition has got to be dismissed.

7. The Court paid its anxious consideration on the submission made. It is not in controversy that the petitioner had been served with charge memo

on 23.3.2005 and he has also tendered his explanation and he also retired on attaining superannuation on 31.3.2005. Though on the day when he retired, the disciplinary proceedings were pending against him, he was allowed to retire from service. The charges framed against him was that he

has allowed one time settlement proposal to the borrower by name Vaithilingam and by doing so, the bank has sustained loss. It is not in

controversy that the said Vaithilingam made borrowal and he was allowed to make the payment towards mortgage dues. For the first time, the

communication was issued by the petitioner herein on 20.5.2002 calling upon the borrower to make the payment of Rs. 7 lakhs stating that the said

notice was issued pursuant to the said G.O. 70 and if the payment was made, the entire transaction would be over and based on the said

representation, the said Vaithialingam has made 1/4th payment on 28.6.2002. Now, at this juncture. It is pertinent to point out that under what

authority, the petitioner has issued such a letter on 20.5.2002 remained unknown. Learned Counsel for the petitioner would submit that a

certificate was issued by the District Authority to issue such a notice and in the absence of such materials placed in the hands of the Court, it cannot

be accepted. Further, in the instant case the contention of the learned Counsel for the petitioner is that the disciplinary proceedings cannot be

continued in the absence of any legal sanction. But, in the instant case, learned Counsel for the bank would submit that rules were framed before

the retirement of the petitioner and those rules are challenged in a writ petition and it has also been pending. This Court finds some force in the

contention made by the learned Counsel for the respondent that if at this juncture, this writ petition is allowed either by quashing the charge memo,

either or directing the bank to disburse the retirement benefits, the bank cannot take all steps for recovering the same, if he comes successful in the

writ petition. Under such circumstances, this Court has to find out a method by which the bank''s interest can be secured, but at the same time in

respect of the rest of the amount, there cannot be any impediment for the petitioner to have the retiral benefits. According to the learned Counsel

for the respondent, the entire benefits which have already accrued in favour of the petitioner, come to the tune of Rs. 4,83,348/- and the loss

alleged to have been sustained by the act of the petitioner, is Rs. 2,69,983/- towards interest. Under such circumstances, except the loss what is

alleged to have been occasioned to the bank as stated above, there cannot be any impediment for giving a direction to the bank to disburse the remainder. In respect of the amount of Rs. 2,69,983/- which according to the bank was the that occasioned and in respect of which charge is also

pending, there is no impediment for the respondent bank to initiate surcharge proceedings for recovery of the same and the respondent is directed

to pay the rest of the amount, within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above observation, the writ petition is disposed of. No costs. Consequently, WP. MP. No. 8436 of 2006 is disposed of.