

**(2014) 04 MAD CK 0282**

**In the Madras High Court**

**Case No :** Writ Appeal No. 1856 of 2012 and M.P. No. 1 of 2012

R. Murugesan

APPELLANT

Vs

The Joint Registrar of Co-op. Societies

RESPONDENT

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**Date of Decision :** 23-04-2014

**Acts Referred:**

Tamil Nadu Co-operative Societies Act, 1983 — Section 153, 80, 81, 82, 83

**Citation :** (2014) LabIC 2718 : (2014) 3 LLN 207 : (2014) 2 LW 996 : (2014) 4 MLJ 513 : (2014) WritLR 670

**Hon'ble Judges :** N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

**Bench :** Division Bench

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## **Judgement**

M. Sathyanarayanan, J.—The writ petitioner is the appellant. He made a challenge to the order dated 3.12.2008, passed by the first respondent, wherein his revision petition came to be dismissed. The said writ petition after contest, was dismissed on 5.6.2012, and hence, this writ appeal.

2. The facts leading to the filing of this writ appeal, would disclose that the appellant/writ petitioner was working as a Secretary of the second respondent-society and he was due to attain the age of superannuation on 31.1.2004. However, on 30.1.2004, the second respondent has issued a memo suspending him from service on contemplation of enquiry. However, no order has been passed, not permitting the appellant to retire from service and also retaining him in service. On 15.5.2004, a charge memo was served on the appellant alleging irregularities in the discharge of his duties and a challenge was made to the disciplinary proceedings on the ground that it has been initiated without any jurisdiction, by way of filing W.P. No. 28873 of 2005. The said writ petition was admitted on 9.7.2005, and interim stay was granted. The same was dismissed on 25.7.2008 by applying the ratio laid down by the Division Bench of this Court in a decision reported in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, and while dismissing the writ petition, liberty was granted to the appellant herein to

redress his grievance before an appropriate forum and accordingly the appellant filed a revision u/s 153 of the Tamil Nadu Co-operative Societies Act, 1983 before the first respondent with a prayer to quash the disciplinary proceedings and it was rejected on 5.9.2008, and the same was put to challenge by filing the present writ petition.

3. The learned Single Judge, during the course of argument in the writ petition, placed reliance on the judgment reported in M.K.S. Balasubramanian Vs. The Kancheepuram Central Cooperative Bank Limited . The learned Single Judge has taking into consideration the judgment rendered by the Division Bench reported in The Registrar of Co-operative Societies and The Additional Registrar of Co-operative Societies (Credit), Chairman-Common Cadre Authority Vs. G. Manoharan and Villupuram District Central Co-operative Bank , has dismissed the said writ petition and challenging the legality of the same, the present writ appeal is filed.

4. Heard the submissions of the learned counsel appearing for the appellant, and the learned Special Government Pleader appearing for the respondents.

5. The core issue that arises for consideration in this writ appeal, is that in the absence of any rule, whether it is open to the first respondent to initiate and continue the disciplinary proceedings after attaining the age of superannuation. The said issue is no longer res integra, as it has been answered by a Division Bench of this Court reported in M.K.S. Balasubramanian Vs. The Kancheepuram Central Cooperative Bank Limited . In the said judgment, the Division Bench, wherein one of us (NPVJ) is a member, has taken into consideration the judgments reported in Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , P. Muthusamy Vs. Tamilnadu Cements Corporation Limited, , N. Kunnai Gowder Vs. The Coimbatore District Co-op. Milk Producers' Union Ltd., , U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, and also distinguished the judgment rendered by the Division Bench of this Court reported in The Registrar of Co-operative Societies and The Additional Registrar of Co-operative Societies (Credit), Chairman-Common Cadre Authority Vs. G. Manoharan and Villupuram District Central Co-operative Bank and held as follows:

9. It is an admitted case of the respondent that the bye-law though provided for a right to continue the Bank to proceed with disciplinary proceedings after allowing the appellant to retire the said amendment is stayed by this Court and the said stay order is still in force. Hence, the said amendment cannot be relied on by the respondent to sustain the order retaining the power to proceed with Disciplinary Proceedings after permitting the appellant to retire.

10. In the decisions reported in 2008 (2) MLJ 585 and P. Muthusamy Vs. Tamilnadu Cements Corporation Limited, , it is held that disciplinary proceedings cannot continue after retirement unless the service rules provides for such right to continue.

11. In the decision, reported in Bhagirathi Jena Vs. Board of Directors, O.S.F.C.

and Others, , in a similar matter in para. 7 it is held thus:

In view of the absence of such a provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor 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 the departmental enquiry even for the purpose of imposing any reduction in the 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 on retirement.

12. Thus, the respondent is not justified in imposing the condition namely reserving its right to proceed disciplinary proceedings while allowing the appellant to retire from his service on 33, 2005. The direction given by the learned Single Judge to the respondent to retain the amount of Rs. 2,69,933/- from terminal benefits payable to the appellant is perfectly justified as the respondent can effect recovery of the loss sustained after initiating surcharge proceedings u/s 87 of Tamil Nadu Co-operative Societies Act, 1983, which is extracted hereunder:

87. Surcharge.- (1) Where in the course of an audit u/s 80 or an inquiry u/s 81 or an inspection or investigation u/s 82 or inspection of books u/s 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in himself or any person specially authorized by him in this behalf, of his own motion or on the application of the board, liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the bye-laws as the Registrar or the person authorised as aforesaid thinks just:-

The above provision empowers to proceed against a person whether he was an officer or a servant, either past or present and even if the person is dead recovery can be made from the legal heir of the said person if he inherited the

property. In the decision reported in U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, , it is held that a retired employee could be proceeded to recover the loss caused by him and amount could be recovered from the retirement benefits. In para. 40 it is held thus:

...in our considered opinion, the High Court was wrong in holding that the proceedings were initiated after the respondent retired and there was no power, authority or jurisdiction with the Corporation to take any action against the writ petitioner and in setting aside the orders passed against him. In our judgment, proceedings could have been taken for the recovery of financial loss suffered by the Corporation due to negligence and carelessness attributable to the respondent employee. The impugned action, therefore, cannot be said to be illegal or without jurisdiction and the High Court was not right in quashing the proceedings as also the orders issued by the Corporation. The Appeal, therefore, deserves to be allowed by setting aside the order of the High Court.

Ultimately, the Division Bench has modified the order passed by the learned Single Judge, by holding that the condition to continue the disciplinary proceedings after retirement against the appellant therein is unsustainable and granting liberty to the respondent to proceed with the surcharge proceedings u/s 87 of the Tamil Nadu Co-operative Societies Act, 1983 for the alleged loss.

6. In yet another judgment of this Court made in W.P. No. 27170 of 2011, dated 29.11.2013, wherein one of us (NPVJ) is a member, a similar issue was considered in the light of the decision reported in P. Thangavel Vs. The Chairman, Common Cadre Committee/Joint Registrar of Cooperative Societies , and M.K.S. Balasubramanian's case was also considered and all other decisions on that legal point, have been submitted and this Court held that the Co-operative employee cannot be kept under suspension beyond the date of superannuation, as there is no provision either under the Tamil Nadu Co-operative Societies Act or under the bye-laws and granted liberty to initiate surcharge proceedings for the alleged loss.

7. This Court, vide order dated 21.4.2014, has directed the learned Special Government Pleader appearing for the respondents, to produce the bye-laws, if any, authorizing the society to continue the disciplinary proceedings against the co-operative employee, after reaching the age of superannuation. Now, it is the submission of the learned Special Government Pleader for the respondents, on instructions, that no such provision is available in the bye-laws and the said submission is placed on record.

8. This Court, on analysis of the facts placed before it, and consideration of the rival submissions, is of the view that the ratio laid down in the above said decision, is squarely applicable to the facts of this case for the reason that admittedly, after attaining the age of superannuation, in the absence of any rule or bye-law, it is not open to the respondents to continue the disciplinary proceedings.

9. Therefore, the writ appeal is allowed and the impugned order passed in this writ petition and the order dated 3.12.2008 passed by the first respondent is set aside and the writ petition is allowed. It is represented that the surcharge proceeding has already been initiated against the appellant and challenging the legality of the same, he filed an appeal before the jurisdictional Special Tribunal for co-operative cases with an application for condonation of delay and the said application is pending. In view of the same, respondents are at liberty to contest the said appeal. The respondents are also directed to confer the statutory and other entitlements due and payable to the appellant in accordance with law, as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.