

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:27.03.2015

Coram:

THE HONOURABLE Dr.JUSTICE S.TAMILVANAN,

THE HONOURABLE Mr.JUSTICE V.S.RAVI

and

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

Writ Petition (MD) Nos.2602 of 2009 and 12007 of 2011

W.P.(MD)No.2602/2009:

S.Andiyannan ...Petitioner

vs.

1.The Joint Registrar,
Co-operative Societies,
Madurai Region, Madurai.

2.The Special Officer/Joint Registrar,
R.K.10, Virudhunagar District Central
Co-operative Bank Limited,
Virudhunagar.

...Respondents

W.P.(MD)No.12007 of 2011:

M.Palanivelu ...Petitioner

vs.

1.The Joint Registrar of Co-operative Societies,
Thanjavur.

2.The Special Officer,
Kumbakonam Central Co-operative Bank Ltd.,
Kumbakonam.

...Respondents

Prayer in WP(MD). 2602/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order of the 1st respondent in Revision Petition No.5 of 2006 Sa Pa dated 7.1.2009 and quash the same and consequently directing the 2nd respondent to return back the amount recovered from the retirement benefit and the gratuity of Rs.36844/- and 17116/- respectively with the reasonable interest.

Prayer in WP(MD). 12007/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, directing the 1st Respondent to issue suitable direction to the 2nd Respondent to pay all the retirement benefits including leave salary, which is due to the Petitioner forthwith with interest from the date of retirement till realization.

Consel for Petitioner : Mr.T.A.Ebenezer

in WP (MD)No.2602/2009

Mr.Veerakathiravan,
 in WP (MD)No.1200/2011
 Mr.K.Chellapandian, AAG for R1
 in WP (MD)No.2602/2009 and
 R1, R2 in WP (MD)No.12007/2011
 Mr.D.Shanmugaraja Sethupathi for R2
 in WP (MD)No.2602/2009

Order on Reference

S.TAMILVANAN, J

This Reference has been made to this larger Bench of Three Judges by the Hon'ble The Chief Justice to answer the following questions of Law:

"1.Whether the disciplinary proceedings initiated against an employee of a co-operative society, governed by the Tamil Nadu Co-operative Societies Act, 1983, could be continued even after retirement of the said employee?

2.Whether Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 could be considered as an enabling provision impliedly empowering the disciplinary authority to continue the disciplinary proceedings even after the retirement of an employee of a co-operative society, governed by the Tamil Nadu Co-operative Societies Act, 1983?"

2. The Hon'ble Mr.Justice S.Nagamuthu made the Order of Reference, in view of the conflicting views rendered by three Division Benches of this Court. In Registrar of Co-operative Societies vs. G.Manoharan, reported in 2010 (2) CTC 234, it was held by a Division Bench that disciplinary proceedings could be continued even after retirement of an employee of a co-operative society, if it is proved that he has caused loss to the establishment and the other decisions in P.Thangavel vs. The Chairman, Common Cadre Committee, reported in 2012 (3) CTC 488 and R.Murugesan v. Joint Registrar of Co-op. Societies, reported in (2014) 4 MLJ 513, it was held by two Division Benches of this Court that in the absence of Service Rules or Bye-law empowering the Society to continue the disciplinary proceedings, no disciplinary proceedings could be continued after the employee is allowed to retire or reached the age of superannuation. On account of the conflicting views taken by three Division Benches of this Court, the matter has been referred to this Larger Bench of three Judges.

3. The Reference made before this Bench relates to the following writ petitions :

It is seen that the Writ Petition in W.P.(MD)No.2602 of 2009 is filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus, calling for the records pertaining to the order of the first respondent in Revision Petition No.5 of 2006 Sa.Pa., dated 07.01.2009, seeking an order to quash the same and consequently direct the 2nd respondent to return back the amount recovered from the retirement benefit and the gratuity of Rs.36,844/- and 17,116/-, respectively, with reasonable interest.

Writ Petition in W.P.(MD)No.12007 of 2011 has been filed under Article 226 of the Constitution of India for issuance of Writ of

mandamus, directing the first respondent therein to issue suitable direction to the second respondent to pay all the retirement benefits, including leave salary, due and payable to the petitioner, with interest from the date of retirement till realization.

4. The first question of the Reference relates to the disciplinary proceeding being initiated against employees of any co-operative society, governed by the Tamil Nadu Co-operative Societies Act, 1983 and this Bench has been asked to consider and answer, whether the disciplinary proceeding initiated against an employee of a co-operative society could be continued even after the retirement of the employee. The second question of law relates to the scope of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 to decide whether it could be considered as an enabling provision, impliedly empowering the disciplinary authority to continue the disciplinary proceeding. In other words, the question is to decide whether the disciplinary authority is impliedly empowered to continue the disciplinary proceeding even after the retirement of any employee of a co-operative society, in view of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, on the ground that it is an enabling provision.

5. Mr.Veera Kathiravan, learned counsel appearing for the petitioner in W.P.(MD)No.12007 of 2011, drew the attention of this Court to Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, hereinafter referred to as "the Act". According to the learned counsel, the aforesaid section of the Act deals only with surcharge, which has no relevancy in deciding the continuation of disciplinary proceeding against an employee of a co-operative society after his retirement from the co-operative society. It is further submitted by the learned counsel that the object of surcharge proceeding is only to recover the loss, if any, incurred by the co-operative society, as compensation, with interest or otherwise, however, according to him, it would not be a penal provision or enabling provision in favour of the disciplinary authority to continue any departmental proceeding against an employee, after his retirement under the Act.

6. Per contra, Mr.K.Chellapandian, learned Additional Advocate General, submitted that both the questions of law 1 and 2 referred to this Bench are inter connected and according to the learned Additional Advocate General, Section 87 of the Act is an enabling provision, empowering the disciplinary authority under the Act and it is not a mere provision for collecting surcharge amount due and payable to the co-operative society.

7. Mr.Shanmugaraja Sethupathi, learned Standing Counsel appearing for the Central Co-operative Bank, the second respondent herein, would argue that both the questions of law have to be answered in favour of the respondents herein. According to him, as held by the Hon'ble Apex Court as well as this Court in various decisions, even after retirement of an employee of a co-operative Society/co-operative Bank, disciplinary proceeding already initiated against an employee could be continued and appropriate orders be passed by the authority, as per the relevant Service Rules or Bye-law of the Society.

8. In support of the respective arguments, both the learned counsel have relied on the following decisions of the Hon'ble Apex Court and this Court, on the legal aspect relating to the Reference made before

this Bench :

- i.(1999) 3 SCC 666 - Bhagirathi Jena vs.Board of Directors, O.S.P.C.
- ii.(2007) 9 SCC 15 - Ramesh Chandra Sharma v. Punjab National Bank.
- iii.(2010) 15 SCC 322 - Girijan Coop.Corpn.Ltd. v. K.Satyanarayana Rao.
- iv.(2013) 6 SCC 515 - Anant R.Kulkarni v. Y.P.Education Society.
- v.(2014) 7 SCC 260 - Dev Prakash Tewari v. U.P.Coop.Institutional Service Board.
- vi.2007 (5) CTC 491 - Kunnai Gowder, N. v. The Coimbatore District Co-op.Milk Producers' Union Ltd.
- vii.2010 (2) CTC 569 - M.K.S.Balasubramanian v. The Kancheepuram Central Co-operative Bank Ltd.
- viii.2012 (3) CTC 488 - P.Thangavel v. The Chairman, Common Cadre Committee.
- ix.2014 (4) MLJ 513 - R.Murugesan v. Joint Registrar of Co-op.Societies.
- x.(2008) 2 SCC 41 - U.P.State Sugar Corpn.Ltd. v. Kamal Swaroop Tondon;
- xi.2010(2) CTC 232 - The Registrar of Co-operative Societies v. G.Manoharan.

9. It is well settled that a Larger Bench to which a Reference is made has to answer only the questions raised in the Reference and it cannot go into the merits of the case or cases, as held by the Hon'ble Apex Court in various decisions. In Kerala State Science & Technology Museum v. Rambal Co, reported in (2006) 6 SCC 258, (Page 262, para 8), the Hon'ble Supreme Court has held as follows :

"8. It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench, i.e., Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue, which is not the question referred to."

10. In T.A.Hameed v. M.Viswanathan, reported in (2008) 3 SCC 243, (Page 245, para 12), the Hon'ble Apex Court has held thus :

"12... Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits."

11. Similarly in Saquib Abdul Hameed Nachan v. State of Maharashtra, reported in (2010) 9 SCC 93 (page 102, para 15), the Hon'ble Supreme Court has held as follows :

"15.... Normally, after answering the reference by the larger Bench, it is for the Reference Court to decide the issue on merits on the basis of the answers given by the larger Bench."

12. It has been categorically held by the Hon'ble Supreme Court that when there is a reference to a Larger Bench on any question of law, the Larger Bench is not empowered to adjudicate upon an issue. However, after answering the questions referred to, the matter should be remitted back to the Reference Court for deciding the matter on merits, on the basis of the answers given by the Larger Bench. The aforesaid decisions rendered by the Hon'ble Apex Court would make it clear that the writ petitions could neither be allowed nor dismissed by the Larger Bench, as the same shall be decided by the Reference Court. Hence, after answering the questions referred to this Bench, the matter shall be remitted back to the Court where the cases are pending, to be disposed of according to law.

13. The Hon'ble Supreme Court in *Bhagirathi Jena vs. Board of Directors, O.S.P.C.*, reported in (1999) 3 SCC 666, has held that the departmental enquiry held in the absence of specific provision for its continuance, after retirement of an employee, is against law. In the aforesaid decision, it was categorically found that in the absence of any provision to continue the departmental enquiry under the Orissa Financial State Corporation Staff Regulations, 1975, after the employee attained superannuation is bad in law. It was further held that the respondent-Corporation had no legal authority to make any reduction in the employee's retiral benefits, since there was no provision for conducting a disciplinary enquiry after the employee's retirement, nor there was any provision stating that in case of misconduct is established, a deduction could be made from the retiral benefits. Once an employee retired from service, there could be no authority vested with the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in retiral benefits payable to the employee in the absence of any provision under the Service Rules. In the absence of such authority, it must be held that the enquiry had lapsed and the employee was entitled to get full retiral benefits.

14. In *Ramesh Chandra Sharma v. Punjab National Bank*, reported in (2007) 9 SCC 15, the question raised was whether a departmental proceeding could be continued despite the delinquent officer's reaching the age of superannuation, would depend upon the applicability extant rules that was considered, wherein it was further held that the question of imposition of dismissal of the delinquent officer from service would not be possible, as he had already reached age of superannuation, hence continuation would not ordinarily be raised. However, as the consequence of such an order provided in the service rules, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law. The question as to whether continuation of a disciplinary proceeding would be permissible or the employer will have to take recourse only to pension rules, would depend upon the terms and conditions of the services of the employee and the power of the disciplinary authority has to be conferred by way of a statute or the Rules governing the service condition of the employee.

15. In *Union of India v. Subedar Ram Narain*, reported in (1998) 2 SCC 52, it was held that Regulation 20(3)(iii) envisages continuation of a disciplinary proceeding, despite the officer ceased to be in service on the date of superannuation. For the said purpose, a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order being passed thereon. The said Regulation, being statutory in nature should be given full effect. When a legal fiction is created under a statute, it must be given its full effect.

16. In *Union of India vs. Subedar Ram Narian* (supra), the question arose was as to whether a departmental proceeding can continue despite the delinquent officer's reaching the age of superannuation and that would depend upon the applicability of the extant of Rules. It was found that the question of imposition of dismissal of the delinquent officer from service, when the employee had already reached the age of superannuation would not arise. However, as per the decision referred to above, as a consequence of such order, as provided under in the service Rules, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law.

17. In *Girijan Coop.Corpn.Ltd. v. K.Satyanarayana Rao*, reported in (2010) 15 SCC 322, it was held that departmental proceedings could be initiated and continued only in terms of Rules framed by the employer and in the absence of any Rules, disciplinary proceedings against retired employees should not have been continued. Referring to the decision rendered in *UCO Bank v. Rajinder Lal Capoor* - (2007) 6 SCC 694, *Ramesh Chandra Sharma v. Punjab National Bank* - (2007) 9 SCC 15 and other earlier decisions, it was held by the Hon'ble Apex Court that departmental proceedings cannot be continued in the absence of any Rules relating to the service conditions of the retired employee.

18. In *UCO Bank vs. Rajinder Lal Capoor* - (2007) 6 SCC 694, the Hon'ble Supreme Court has held as follows:

"21.The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are the seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder I.e. Continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceedings, it is trite law, is not initiated merely by issuance of a show-cause notice. It is initiated only when a charge-sheet is issued (see *Union of India v. K.V.Jankiraman* - (1991) 4 SCC 109). This aspect of the matter has also been considered by this Court recently in *Coal India Ltd. v. Saroj Kumar Mishra* [(2007) 9 SCC 625] wherein it was held that date of application of mind on the allegations levelled against an officer by the competent authority as a result whereof a

charge-sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations."

19. In *Anant R.Kulkarni v. Y.P.Education Society*, reported in (2013) 6 SCC 515, the Hon'ble Apex Court considered the question as to whether continuation of departmental enquiry is permissible against a retired employee, wherein it was held that enquiry against a retired employee is subject to the statutory Rules, which governs the terms and conditions of his service. If the enquiry was initiated while the delinquent employee was in service, it would continue even after his retirement but, nature of punishment would be limited to certain extent and accordingly, punishment of dismissal or removal of the employee from service cannot be imposed on the retired employee. The Hon'ble Supreme Court has categorically ruled that in the absence of any statutory power conferred on the management, to hold a fresh enquiry after the retirement, no such enquiry against the employee could be conducted. In the aforesaid decision, the Apex Court has decided the issue thus:

"24.Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed."

20. In *Dev Prakash Tewari v. U.P.Coop.Institutional Service Board*, reported in (2014) 7 SCC 260, it was held by the Hon'ble Supreme Court, referring to various earlier decisions, that no authority is vested with the employer, the respondent therein, to continue the disciplinary proceeding against an employee after his retirement from service, even for the purpose of imposing any reduction in retiral benefits payable to the employee/appellant therein, in the absence of Service Rules enabling the authority to continue the same, since the enquiry had lapsed and the appellant / retired employee was entitled to get full retiral benefits.

21. Mr.K.Chellapandian, learned Additional Advocate General, emphasized his view mainly relying on the decision in *The Registrar of Co-operative Societies v. G.Manoharan*, rendered by a Division Bench of this Court and reported in 2010 (2) CTC 234. While dealing with Sections 87, 75 and 76 of the Tamil Nadu Co-operative Societies Act, 1983 (Act 30/1983), it was held by the Division Bench, referring to various decisions of the Hon'ble Apex Court, that the said Act empowers authorities to proceed against paid officers and servants of co-operative institution and that the power conferred under Sections 75 and 76 of the Act includes for taking disciplinary action and also imposing punishment, hence the authorities could proceed against the delinquent officers for repayment and restoration of loss caused to Co-operative Society.

22. In *P.Thangavel v. The Chairman, Common Cadre Committee*, reported in 2012 (3) CTC 488, another Division Bench of this Court, relying on various decisions of the Hon'ble Apex Court, held that

disciplinary authority cannot reserve a right to proceed with disciplinary proceeding, after the retirement of a delinquent official and as per the ratio laid down in Registrar of Co-operative Societies v. G.Manoharan, it can be made applicable only in case of surcharge proceeding and not for disciplinary a proceeding.

23. In R.Murugesan v. Joint Registrar of Co-op. Societies, reported in (2014) 4 MLJ 513, another Division Bench of this Court held that co-operative employee cannot be kept under suspension beyond the date of superannation, as there is no provision either under the Tamil Nadu Co-operative Societies Act or in the bye-law and granted liberty to initiate surcharge proceedings for the alleged loss. In the same decision, it was also made clear, referring various decisions of the Hon'ble Apex Court and the decision of this Court in K.Marappan vs. Deputy Registrar of Co-operative Societies, reported in 2006 (4) MLJ 641, decided by a Constitution Bench of this Court, that after attaining the age of superannation, in the absence of any Service Rules or bye-law, it is not open to the co-operative society to continue any disciplinary proceeding.

24. This matter has been referred to this Bench, in view of the decisions rendered in The Registrar of Co-operative Societies v. G.Manoharan and other two decisions in P.Thangavel v. The Chairman, Common Cadre Committee and R.Murugesan v. Joint Registrar of Co-op. Societies.

25. In this regard, both the learned counsel referred Section 87 of the Act, relating to surcharge towards deciding the second question referred to this Bench. At this juncture, we find it relevant to extract Section 87 of the Act, which reads as follows:

"87.Surcharge.--(1)Where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a Society, it appears that any person who is or was entrusted with the organisation 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 wilful negligence or has made any payment which is not in accordance with this Act, the Rules or the Bye-laws, the Registrar himself or any person specifically authorised by him in this behalf, of his own motion or on the application of the Board, liquidator or any creditor or contributor may frame charges against such person or officer or servant and after giving reasonable opportunity to the person concerned and in the case of a deceased person, to the 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, mis-application of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the Rules or the Bylaws as the Registrar or the

person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to in this sub-section:

Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered Society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

(4) The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any Court or office;

(e) issuing Commission for examining of witnesses."

26. Mr. Veera Kathiravan, learned counsel appearing for the petitioners, mainly contended that so far as Section 87 relating to Surcharge is concerned, its object is only to recover the amount or loss incurred by the Co-operative Society, with or without interest, if it is established that the same is payable by an employee, however, which is nothing to do with the continuation of departmental proceeding, after the retirement of an employee of a co-operative society. According to him, Section 87 of the Act cannot be construed as an enabling provision in favour of the employer to continue the departmental proceeding, after the retirement of an employee of any co-operative society.

27. A bare reading of the said Section would show that it relates to recovery of the amount from any employee or any other person who has caused financial loss to the co-operative society. It is not in dispute that the term "surcharge" need not necessarily related to punishment being imposed on the employee. As contended by the learned counsel appearing for the petitioners, the scope of Section 87 of the Act pertaining to surcharge is to recover the amount from the person, who caused loss to the co-operative society. In the light of the decisions rendered by the Hon'ble Apex Court, it is clear that Section 87 of the Act could not be construed as an enabling provision to the authorities to

continue or extent the departmental proceeding after the retirement of an employee. It is well settled in various decisions of the Hon'ble Supreme Court that if the loss caused by any employee is established, in the manner known to law, the employer / co-operative society can recover the amount, by way of surcharge with or without interest, however, surcharge proceeding cannot be initiated against any retired employee.

28. So far as the second legal question is concerned, it is crystal clear that the object of Section 87 of the Act is only to recover the loss caused to any co-operative institution by an employee, if it is established as per procedure known to law. Surcharge need not be penal in nature, if the loss caused by him is admitted by the employee or established by the authority against him, that could be recovered by the co-operative society. However, even surcharge proceedings cannot be initiated after the retirement of an employee to recover the same from his retiral benefits.

29. The first legal question referred to this Bench is whether the disciplinary proceedings initiated against an employee of a co-operative society governed by the Tamil Nadu Co-operative Societies Act can be continued even after the retirement of the said employee. The decisions relied on by both the learned counsel have categorically make it clear that the legal position is that the authority could continue the departmental enquiry against retired employee, only subject to applicable statutory Rules or bye-law, which govern the terms and conditions of his service of the employee. Hence, the relevant Rules governing the service conditions of the employee is the determining factor as to whether and in what manner a domestic enquiry can be continued against an employee, who retired after reaching the age of superannation. Hence, had there been any enquiry initiated while the delinquent employee was in service, it could be continued even after his retirement, subject to the service Rules or bye-law of the co-operative society. If the service Rules relating to the employee permits for continuation, there would be no bar in continuing the departmental proceeding, that was initiated while he was in service, even after his retirement. It is also categorically held by the Hon'ble Supreme Court in the latest decisions, that in such circumstances, even if the guilt is proved, there is no possibility of imposing punishment of dismissal or removal from service, as the same is not legally sustainable.

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

Under the Tamil Nadu Co-operative 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 Co-operative 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 co-operative 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.

Answering the questions 1 and 2 referred to this Bench, the matter is ordered to be remitted back to the Reference Court for disposal, according to law.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

- 1.The Joint Registrar,
Co-operative Societies,
Madurai Region, Madurai.
- 2.The Special Officer/Joint Registrar,
R.K.10, Virudhunagar District Central
Co-operative Bank Limited,
Virudhunagar.
- 3.The Joint Registrar of Co-operative Societies,
Thanjavur.
- 4.The Special Officer,
Kumbakonam Central Co-operative Bank Ltd.,
Kumbakonam.

+1cc to Mr.Veerakathiravan, Advocate in SR.15208
+1cc to the Special Government pleader in SR.15496

Order on Reference in
Writ Petition (MD) Nos.2602 of 2009 and
12007 of 2011
Dated: 27.03.2015

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