

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.25008 of 2014

M.P.No.1 of 2014

A.S.Jayavelu .. Petitioner

vs.

1.Joint Registrar of Cooperative Societies,
Ranipet.

2.Vellore District Central Cooperative Bank Limited,
Rep. by its Managing Director,
No.1, Officers Lane,
Vellore. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the concerned records from the first respondent, quash the order of the first respondent dated 13.08.2014 bearing Na.Ka.No.2931/14 A2 Revision Petition No.7/2014 and consequently, direct the second respondent Bank to pay the petitioner of his terminal benefits such as Gratuity, Leave Encashment etc., along with interest @ 18% per annum.

For Petitioner : Mr.Balan Haridas
For Respondents : Mrs.T.Girija,
Government Advocate for R1
Mr.L.P.Shanmugasundaram,
Special Govt. Pleader for R2

W E B C O P Y
O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to quash the order of the first respondent dated 13.08.2014 bearing Na.Ka.No.2931/14 A2 Revision Petition No.7/2014 and consequently, direct the second respondent Bank to pay terminal benefits such as Gratuity, Leave Encashment etc., to the petitioner along with interest @ 18% per annum.

2. The petitioner was working in the second respondent Society and retired on 31.05.2012 as Circle Officer, without prejudice to the criminal case pending and had rendered 40 years of unblemished record of service. The criminal proceedings initiated viz., C.C.No.29/2009, 30/2009 and 31/2009 had ended in acquittal, vide judgment dated 12.09.2012 passed by the Judicial Magistrate No.II, Vellore. The petitioner immediately sent a representation dated 28.09.2012 requesting the respondents to release the terminal benefits and along with the said representation, the petitioner sent a copy of the judgment delivered in the criminal cases, but there was no response and therefore, the petitioner approached the second respondent requesting to release the terminal benefits. However, the second respondent did not release the terminal benefits and the petitioner was also informed that Surcharge Proceedings are pending against him. Based on the report of the Cooperative Sub- Registrar dated 28.11.2005 submitted under Section 81 of the Tamil Nadu Cooperative Societies Act, Surcharge Proceedings was initiated against the petitioner and 20 others. After adjudicating the matter, vide order dated 06.09.2010, the Surcharge Proceedings initiated against the petitioner was dropped and it had become final. But inspite of the same, the terminal benefits was not settled and hence, the petitioner has come forward with this writ petition.

3. When the matter is taken up for consideration, Mr.Balan Haridass, learned counsel appearing for the petitioner submitted that though the petitioner was acquitted in the criminal case and Surcharge Proceedings are pending, the respondents did not settle the terminal benefits and in the said Surcharge Proceedings, one Ramadoss has preferred an appeal, wherein the Cooperative Tribunal has remanded the matter back to the Deputy Registrar. Since the matter was remanded back, again notice was issued to the petitioner. Hence citing the remand order passed in the appeal and pursuant to which notice was issued to the petitioner, the respondent is not settling the terminal benefits. In this regard, the learned counsel appearing for the petitioner relied on a judgment of the Division Bench of this Court dated 23.04.2014 made in W.A.No.1856 of 2012 [R.Murugesan v. The Joint Registrar of Cooperative Societies, Thiruvannamalai and another] wherein it has been held that even surcharge proceedings are pending, the petitioner cannot be denied payment of terminal benefits.

4. Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the second respondent has drawn the attention of this Court to the counter affidavit of the second respondent and would submit that since the matter was remanded back, again notice was issued to the petitioner initiating

surcharge proceedings and before completion of such proceedings, terminal benefits cannot be released.

5. Keeping the submissions made on either side, I have gone through the entire materials available on record.

6. I am of the opinion that pendency of surcharge proceedings cannot be a bar for releasing the terminal benefits. It is relevant to extract the relevant portion of the judgment of the Division Bench of this Court dated 23.04.2014 made in W.A.No.1856 of 2012 [R.Murugesan v. The Joint Registrar of Cooperative Societies, Thiruvannamalai and another] relied on by the learned counsel appearing for the petitioner:

"7. 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 2012 (3) CTC 488 [P.Thangavel vs. The Chairman, Common Cadre committee/Joint Registrar of Co-operative 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.

In the light of the above judgment, I am of the opinion that the respondents cannot deny the payment of terminal benefits to the petitioner that too when the petitioner was acquitted in the criminal case.

7. In the result, this Writ Petition is allowed and the impugned order of the first respondent dated 13.08.2014 bearing Na.Ka.No.2931/14/A2 Revision Petition No.7/2014 is set aside and the second respondent is directed to release the terminal benefits and other entitlements due and payable to the to the petitioner as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To

1.Joint Registrar of Cooperative Societies,
Ranipet.

2.Managing Director,
Vellore District Central Cooperative Bank Limited,
No.1, Officers Lane, Vellore.

+lcc to Mr.Balan Haridas, Advocate, S.R.No.59378

+lcc to Mr.C.P. Shanmugasundaram, Advocate, S.R.No.59865

+lcc to the Government Pleader, S.R.No.60131

ssi (CO)

md (15/11/2016)

W.P.No.25008 of 2014



WEB COPY