IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.38889 of 2016

J.Selvaretnam ... Petitioner

vs.

1. The State of Tamilnadu rep. by
   its Secretary,
   Micro, Small and Medium Enterprises
   Department, Secretariat, Fort St. George,
   Chennai-9.

2. The Principal Secretary/Industries Commissioner
   and Director of Industries and Commerce,
   Office of the Industries Commissioner
   and Director of Industries and Commerce,
   SIDCO Office Building, Guindy,
   Chennai-32. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents to release the pensionary benefits to the petitioner, after recovering the loss caused to the Government, as per the orders of the 1st respondent dated 06.04.2015 in G.O.(Ms.)No.18, Micro, Small and Medium Enterprises (E-II(2)) Department, within the time limit that may be fixed by this Court.

For Petitioner : Mr.K.Rajasekaran
For Respondents : Mr.S.N.Parthasarathi, Govt. Advocate

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the respondents to release the pensionary benefits to the petitioner, after recovering the loss caused to

the Government, as per the orders of the 1st respondent dated 06.04.2015 in G.O.(Ms.)No.18, Micro, Small and Medium Enterprises (E-II(2)) Department, within the time limit that may be fixed by this Court.

3. The case of the petitioner is as follows:

(a) When the petitioner was discharging his duties as Deputy Director (Industrial Co-operatives), charges were framed against him and an enquiry was conducted with regard to the eight charges levelled against him. The charges were related to sanction of personal loans in violation of the instructions issued by the District Registrar of Co-operative Societies and for the lapses in sanctioning the regular overdrafts while working as Branch Manager, TAICO Bank, Madurai Branch, Madurai.

(b) While so, the petitioner attained the age of superannuation on 28.02.2006, but, he was not allowed to retire from service on the date of superannuation. The petitioner submitted his explanation for the charges levelled against him and a report was submitted by the Enquiry Officer holding that all the charges except Charge No.3 were proved. A surcharge enquiry was ordered to find out the quantum of loss and also to fix the individual responsibility. In the revised Surcharge Enquiry Report, his individual responsibility was fixed at Rs.6,36,321.50 and it was ordered to be recovered with interest from 01.10.2010 till the date of recovery from him.

(c) It is further stated that for the proved charges, the Government proposed to impose the major punishment of removal from service and also to recover the loss amount as recommended under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983. Before imposing the major punishment, the views of the Tamil Nadu Public Service Commission were called for by the Government in the letter dated 03.12.2013, who in turn, opined that the proposed punishment does not commensurate with the nature of the delinquencies. Therefore, the Commission is of the view that the punishment imposed by the Government may be modified as Compulsory Retirement instead of removal from service and advised the Government accordingly. It is also pertinent to note that from 28.02.2006 onwards, the petitioner was under suspension.

(d) The Government by order dated 06.04.2015 imposed the punishment of compulsory retirement as recommended by the TNPSC. In so far as the recovery of the loss is concerned, the Government by order dated 06.04.2015 ordered that the recovery of loss caused to the Government may be recovered from his pensionary and terminal benefits as per Rule 39(1) of the Tamil Nadu Pension Rules, 1978. Further, even though orders have been issued by the 1st respondent as early as on 06.04.2015 itself, modifying the punishment and directing the 2nd respondent to issue appropriate orders after recovering the loss, till today, no orders have been passed nor his pension has been sanctioned. Hence, the present Writ Petition.

4. When the matter is taken up for hearing, the learned Counsel for the petitioner would submit that the petitioner would be satisfied if a direction is issued to the 2nd respondent to consider the case of the petitioner on the basis of the final orders issued by the 1st respondent as early as on 06.04.2015 itself and pass appropriate orders within a stipulated period.

5. Heard the learned Government Advocate who has taken notice on behalf of the respondents.

6. Considering the limited prayer now made by the learned Counsel for the petitioner, this Court directs the 2nd respondent to consider the case of the petitioner on the basis of the final orders issued by the 1st respondent as early as on 06.04.2015 itself and pass appropriate orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this Order.

7. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi
To

1. The Secretary,
State of Tamilnadu,
Micro, Small and Medium Enterprises
Department, Secretariat, Fort St. George,
Chennai-9.

2. The Principal Secretary/Industries Commissioner
and Director of Industries and Commerce,
Office of the Industries Commissioner
and Director of Industries and Commerce,
SIDCO Office Building, Guindy,
Chennai-32.

+1cc to Mr.K. Rajasekaran, Advocate, S.R.No.64318
+1cc to the Government Pleader, S.R.No.64403

rk(CO)
md(30/11/2016)