

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.43189 of 2016

and

W.M.P.No.37018 of 2016

P.Krishnan

.. Petitioner

Vs

1. The Deputy Registrar of
Co-operative Societies,
Rasipuram Pirivu Road,
Narasingapuram & P.O.
Attur Taluk,
Salem District.

2. The Management of Attur Pudupettai
Primary Agricultural Co-operative Society Ltd.
Rep. By its Secretary,
No.12, Karuthan Street,
Pudupettai, Attur,
Salem District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing respondents to pay the petitioner backwages and other attendant benefits of Rs.16,64,458/- for the period of his non-employment from 16.11.1998 to 30.11.2003 and settle his retirement benefits i.e. Provident Fund and gratuity with interest at the rate of 12% per annum with effect from 30.11.2003 and award costs.

For Petitioner : Mr.S.Ayyathurai

For Respondents : Mr.L.P.Shanmugha Sundaram,
Spl. Government Pleader (Co-op).

ORDER

By consent, the Writ Petition is taken up for final disposal.

2. Mr.L.P.Shanmugha Sundaram, learned Special Government Pleader (Co-op) accepts notice on behalf of the respondents.

3. The petitioner has joined the service of the second respondent Society as a Peon. Subsequently, he passed S.S.L.C. and acquired training and he was promoted as Clerk. On account of honest and sincere services of the petitioner, he was promoted periodically and finally posted as Secretary. While he was working as such, on 16.11.1998, he was placed under suspension and subsequently a charge memo was issued to him alleging that he failed to detect the misappropriation of Rs.2,56,000/- by Sukumar (Cashier) and Sakthivel (Clerk) and thereby he colluded with them in their committing offence of misappropriation. The management also filed a complaint against him and the two other persons and two charge sheets in CC No.110 of 2001 and CC No.111 of 2001 respectively were filed before the jurisdictional Court.

4. The petitioner would further state that during the period of suspension, he was not paid subsistence allowance and therefore he filed a case before the authority concerned and the authority has issued an order dated 31.08.2000 directing the second respondent to pay a sum of Rs.45,945/- being the arrears of subsistence allowance. But the said order was not complied with. In the meantime, the second respondent has issued an order dated 03.12.1999 wherein it is stated that the petitioner was dismissed from service, without even conducting any enquiry or without issuing show cause notice to the petitioner. Challenging the order of dismissal passed by the second respondent, the petitioner has filed a petition in I.D.No.359 of 2000 before the Labour Court, Salem and an award dated 26.06.2006 came to be passed directing the second respondent to pay him back wages and other attendant benefits for the period of his non-employment i.e. from 16.11.1998 to 30.11.2003 and in the interregnum, he reached the age of superannuation on 30.11.2003.

5. The second respondent management challenged the award of the Labour Court by filing a Writ Petition No.27356 of 2007 in which a conditional order was passed on 07.03.2010 to deposit amount and the petitioner was also permitted to withdraw 25% out of the 50% back wages deposited. However, he could not withdraw the 25% of the back wages. Ultimately, the writ petition filed by the second respondent was allowed on 05.06.2012 holding that the petitioner cannot be construed as workman under the Industrial Disputes Act and his grievances can be ventilated only under the Tamil Nadu Shops and Establishment Act, 1947. Therefore, while dismissing writ petition this Court directed the petitioner to invoke the provision of Shop and Establishment Act by filing an application before the appropriate authority.

6. Accordingly, the petitioner filed an appeal before the Deputy Commissioner of in Appeal No.7 of 2012 and on 04.04.2016 the appeal was allowed and the order of dismissal was set aside. The petitioner further submits that a letter dated 21.04.2016 enclosing a calculation memo of the back wages and other consequential benefits was sent by him

followed by a lawyer notice dated 22.09.2016 and despite such letter no orders have been passed and therefore he has come to this Court by filing this writ petition.

7. Heard the submissions of Mr.L.P.Shanmugha Sundaram, learned Special Government Pleader (Co-op) appearing on behalf of the respondents.

8. Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the same, directs the second respondent to consider the representation of the petitioner dated 21.04.2016 as well as lawyer notice dated 22.09.2016 and pass orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this Order and communicate the decision taken to the petitioner.

9. The Writ Petition is disposed of with the above directions. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Deputy Registrar of
Co-operative Societies,
Rasipuram Pirivu Road,
Narasingapuram & P.O.
Attur Taluk,
Salem District.

2. The Management of Attur Pudupettai
Primary Agricultural Co-operative Society Ltd.
Rep. By its Secretary,
No.12, Karuthan Street,
Pudupettai, Attur,
Salem District.

- 1 cc to Mr.R. Prem Narayan, Advocate, Sr. 70807
1 cc to Mr.S. Ayyathurai, Advocate, Sr. 72878
1 cc to Government Pleader, Sr. 73306

W.P.No.43189 of 2016

MV (CO)
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