BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **09.06.2016**
Coram
THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.16730 of 2014
and
M.P.(MD)No.1 of 2015

C.Baskaran :Petitioner
vs.

1.The Deputy Inspector General of Police,
Dindigul Range, DIG Office,
Dindigul.

2.The Superintendent of Police,
District Police Office,
Theni District, Theni.

3.The Treasury Officer,
Treasury Office,
Taluk Office Campus,
Periyakulam, Theni - DT.

4.The Secretary,
M.P.109 Theni District Police
Dept.Co-operative Society Ltd.,
District Police Office,
Theni - 625 531. : Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the respondent No.2 to release petitioner's pension from 01.05.2014 within a stipulated time, as petitioner got superannuated from 30.04.2014 without any remarks during his service and pass orders.

For Petitioner : Mr.C.Masilamani
For Respondents (R1 to R3) : Ms.S.Bharathi Government Advocate
For Respondent-4 : No Appearance

ORDER

Mr.C.Baskaran, a retired Sub Inspector of Police, has filed the present Writ Petition, seeking a Writ of Mandamus to direct the 2nd respondent to release his pension from 01.05.2014 within a stipulated time, as he was allowed to retire from service, as he got superannuated on 30.04.2014, without any remarks during his service.

2. Learned counsel appearing for the petitioner would submit that the petitioner is eligible for pension from 01.05.2014. The office of the Principal Accountant General (A&E), Chennai, forwarded an authorization letter for pension on 08.07.2014 to the Superintendent of Police, Theni District and the Treasury Officer, Theni. Inspite of the above authorization letter for payment of pension, he has not been given pension till date. While he was serving as Head Constable, his friend Mr.B.Mohandass, who also served in the same department for 24 years applied for loan, for which the petitioner had given surety to the said Mr.B.Mohandass. But unfortunately, he was removed from the service of the Police Department, by an order dated 28.06.2000 and after two years, he died on 27.04.2002. As a result, the 4th respondent issued a letter demanding amount of Rs.94,544/- which includes Rs.33,200/- as Principal amount and Rs.61,268/-, as interest and Rs.76/- for notice charge for having given surety for the said B.Mohandass. After some time, he also received one more letter from the 4th respondent on 18.08.2014 for the same cause of action demanding Rs.1,39,748/-, which includes principal amount interest and notice charges. On receipt of the above, the petitioner gave his representation on 27.03.2013 to the first respondent. Later on, the first respondent has intimated the second respondent on 03.06.2013 with a direction to take necessary steps to collect the loan amount from the legal heirs of the said B.Mohandass so as to pay the money to the Society and intimate the status thereof to the first respondent. However, no action was taken by the second respondent. In view of the long lapse of time since the original debtor Mr.B.Mohandass after removal from service on 28.06.2000 died on 27.04.2002 it is not open to them to proceed against him or failed to pay the retiral benefits to the petitioner.

3. Adding further, he would submit that if the respondents had taken sufficient steps while the original debtor Mr.B.Mohandass was alive, the entire loan amount for which he stood as a guarantor would have been collected by now. Since the second respondent had miserably failed to do his job then in view of the death of the original debtor and the successive death of his wife on 21.09.2006 and the death of his son on 26.03.2003 the petitioner has been unnecessarily put to grave problem along with the mounting interest. Therefore, the petitioner cannot be held responsible.

4. Finally he would argue that since for several mistakes committed by various officials in the second respondent department at least the original loan amount of Rs.40000/- for which he stood as surety may be collected and for the interest amount, a direction may be given to waive thereof, as the petitioner is prepared to pay only the original loan amount.

5. A detailed counter affidavit has been filed by respondents 1 to 3.

6. Learned Government Advocate appearing for respondents 1 to 3 would submit that the petitioner has given his surety in favour of said B.Mohandass, who obtained a loan of Rs.40,000/- from the 4th respondent Society by agreeing to the terms of the Society. Both the petitioner and his friend Late. B.Mohandass executed a 'Vennilai Loan Agreement' in favour of the Society on 11.01.1999 that has not been denied by the petitioner. After exhausting the legal sources only, letters dated 25.11.2008 and 18.08.2014 were sent to the petitioner to settle the loan amount of said B.Mohandass. Finding no response from 2004 onwards continuous demand from the society to settle his share amount was informed but again the petitioner did not come forward to settle the same, except giving representation. Therefore, his share amount has been withheld. Therefore, there is no error as alleged by the petitioner by sending letter to the petitioner for repayment of arrears of loan amount.

7. Although the petitioner was liable to pay the liability on behalf of Late B.Mohandass in view of the subsequent events removal of B.Mohandass from the service of the Police Department on 28.06.2000 and subsequent sudden demise of the said B.Mohandass on 27.04.2002, the respondents were not in a position to proceed against the said amount. Again adding further, the said original debtor Late Mr.B.Mohandas's wife also passed away on 21.09.2004 and her son also predeceased on 26.03.2003.

8. Therefore, in view of the aforementioned successive unpleasant events the respondents were not in a position to proceed against them. In any event, as it is a well settled legal position, the guarantor has to step into the shoes of the original debtor. Therefore, the Society having seen that the said B.Mohandass, the original debtor passed away and his wife and son also died on the aforementioned dates successively, the 4th respondent has rightly issued notice on 25.11.2008, demanding a sum of Rs.94,544/- including Rs.33,200/-, as principal amount and Rs.61,268/-, as interest and Rs.76/- for notice charge for having given surety to the said B.Mohandass. Finally, finding that no response was forthcoming from the petitioner, his retiral benefits have been withheld.

9. This Court fully agrees with the submissions made by the learned Government Advocate for not releasing the retiral benefits. As a matter of fact, the second respondent after getting proper accounts from the 4th respondent could have disbursed the retiral benefits with due adjustment. Now, the petitioner was dispersed with all the retiral benefits after adjusting the aforesaid amount. Therefore, this Court is not

able to find any merits in the Writ Petition. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The Deputy Inspector General of Police,
Dindigul Range, DIG Office, Dindigul.

2.The Superintendent of Police,
District Police Office,
Theni Ditrict, Theni.

3.The Treasury Officer,
Treasury Office,
Taluk Office Campus,
Periyakulam, Theni - DT.

+1cc to Spl.Government Pleader, Sr.No.29437
mpk
AA/SKS-RR/05.07.2016/4p-5c

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