

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.3311 of 2017

V.Govindasamy

... Petitioner

Vs

1. The Principal Secretary to Government
Cooperation, Food & Consumer Protection Department
Secretariat, Fort St George, Chennai 600 009.
2. The Registrar of Cooperative Society
Kilpauk, Chennai 600 010.
3. The Joint Registrar of Cooperative Society
Vellore Region, Vellore District Collector
office campus, Vellore 632 009.
4. The Deputy Registrar [PDS]
O/o.The Joint Registrar of Cooperative Society
Vellore Region, Vellore District Collector
office campus, Vellore 632 009.
5. The Accountant General [A&E]
Anna Salai, Teynampet,
Chennai 600 018.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to release the retirement benefits payable to the petitioner as on date of retirement on 31.01.2005 in the post of Selection Grade Cooperative Sub Registrar based on the Pension payment order issued by the 3rd respondent in Rc.No.11089/04/A3 dated 18.11.2015 along with interests at the rate of 24% per annum for the delayed payment, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader
[Co op] for RR 1 to 4

Mr.V.Vijay Shankar for R5

ORDER

By consent, the writ petition is taken up for final disposal. Mr. Mr.L.P.Shanmugasundaram, learned Special Government Pleader [Coop.] accepts notice on behalf of the respondents 1 to 4 and Mr.V.Vijaya Shankar, learned Standing Counsel accepts notice on behalf of the 5th respondent.

2. The petitioner, in the affidavit filed in support of this writ petition, would aver that while he was working as Cooperative Sub-Registrar and was due to retire from service on 31.01.2005, charges were framed against him under Rule 17 [b] of CCA Rules on the ground of lack of supervision and therefore, prior to retirement, the petitioner was placed under suspension and was also not allowed to retire from service and ultimately, the charges have been dropped as against the petitioner vide proceedings of the 3rd respondent dated 27.02.2011. The petitioner, apart from visited with departmental proceedings, had also faced Surcharge Proceedings and the 3rd respondent, vide order dated 06.09.2010, had dealt with the case of 21 employees and insofar as the petitioner is concerned, the petitioner and two others were discharged/exonerated and one of the employees, viz., Mr.P.Ramadas, who suffered adverse order in the Surcharge Proceedings, filed Statutory Appeal before Special Tribunal for Cooperative Societies Cases / Court of Principal District Judge, Vellore, in CTA No.23/2010 and vide judgment dated 09.03.2012, the appeal was allowed and the matter was remanded to the 4th respondent for fresh adjudication and the petitioner was also issued with a notice on the pretext that the entire matter was remanded.

3. The petitioner has also faced criminal prosecution and it was also dropped and taking into consideration of the same, the petitioner was also permitted to retire from service on 31.01.2005 vide order of the 3rd respondent dated 03.06.2015 and the 3rd respondent had also forwarded the proposal on 18.11.2015 to the 5th respondent for payment of pensionary benefits and also indicated that the petitioner had taken Medium Term Loans and since he has not remitted a sum of Rs.6,09,615/-, due and payable, it is to be recovered from the Gratuity amount payable to him and also indicated that the Surcharge case is also pending on the file of the Deputy Registrar, Ranipet. The 5th respondent has also taken note of the said communication and sent a communication to the 3rd respondent on 28.03.2016, with a copy marked to the petitioner, stating that the pensionary benefits cannot be released until all charges are exonerated and the true picture of the case without concealing any material fact may be forwarded to release the pensionary benefits of the petitioner. Challenging the legality of the same, the petitioner came forward to file this writ petition.

4. Mr.G.Sankaran, learned counsel appearing for the petitioner has drawn the attention of this Court to the order dated 06.09.2010 passed in the Surcharge Proceedings by the 4th respondent and would submit that admittedly, the petitioner who was arrayed as the 10th respondent, was exonerated and the appeal in CTA.No.23/2010 was filed by the 21st respondent, viz., P.Ramadas, on the file of the Court of Principal District Judge, Vellore, [Special Tribunal for Cooperative Societies Cases] and though it was remanded vide order dated 09.03.2012, the fact remains that the order of remand can be made applicable only to the appellant and not in respect of other respondents, especially the petitioner herein who was arrayed as 10th respondent and misconstruing the said order, the 3rd respondent has sent the pension proposal dated 18.11.2015, as if the Surcharge Proceedings are pending, based on which, the petitioner has been denied retiral benefits and therefore, prays for appropriate orders.

5. Per contra, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents 1 to 4 would submit that since the operative portion of the judgment in CTA.No.23/2010 would indicate that the Surcharge Proceedings have been remanded and the 3rd respondent was under the mistaken impression that the Surcharge Proceedings not reopened against rest of them also and appropriate Clarification Letter/communication will be sent to the 5th respondent without any further delay and it is further submitted that notice was also issued to the petitioner after the said order.

6. Mr.V.Vijay Shankar, learned Standing Counsel appearing for the 5th respondent would submit that in the light of the communication received from the 3rd respondent about the pendency of the Surcharge Proceedings, further action cannot be taken unless a Clarification Letter is received from the 3rd respondent.

7. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

8. The 4th respondent, in the order dated 06.09.2010 passed in the Surcharge Proceedings initiated under section 87 of the Tamil Nadu Cooperative Societies Act, 1983, has clearly indicated that the petitioner has been exonerated of the charges/allegations and one of the persons who suffered the order of recovery, viz., Mr.Ramadas, had filed an appeal in CTA.No.23/2010 on the file of the Court of the Principal District Judge, Vellore [Special Tribunal for Cooperative Societies Cases] and it was allowed and remanded on 09.03.2012. it is pertinent to point out at this juncture that though the operative portion of the order says that the order of the 4th respondent has been set aside and remanded,

the appeal was filed by the 21st respondent, viz., Ramadas and as such, the order of remand can only be pertains to him and not in respect of any other persons and admittedly, rest of the persons have not preferred any appeal and that apart, the above cited judgment would also indicate that the matter has been remanded for the purpose of providing opportunity to the appellant therein, viz., Ramadas, alone. However, the 3rd respondent has misconstrued the order and sent the pension proposal dated 18.11.2015 to the 5th respondent indicating that Surcharge Proceedings is pending on the file of the 4th respondent as against the petitioner herein. In the considered opinion of the Court, such an indication in the communication dated 18.11.2015, would indicate non-application of mind on the part of the 3rd respondent to the contents of the judgment dated 09.03.2012 in CTA.No.23/2010 on the file of the Court of the Principal District Judge, Vellore [Special Tribunal for Cooperative Societies Cases]. Though it is submitted by the learned Special Government Pleader that after remand, notice has been issued to the petitioner, in the considered opinion of the Court, such a notice is wholly illegal and unsustainable for the reason that the order of remand pertains to Ramadas alone and nobody else. The 5th respondent has taken note of the said communication and also sought a clarification from the 3rd respondent and therefore, the 3rd respondent is bound to clarify the said position to the 5th respondent without any further loss of time.

9. Accordingly, the 3rd respondent is directed to send a communication to the 5th respondent as to the non-pendency of the Surcharge Proceedings insofar as the petitioner is concerned within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 5th respondent is directed to process the pension proposal of the petitioner in accordance with law and pass appropriate orders within a further period of two weeks thereafter and communicate the decision taken, to the petitioner as well as to the respondents 2 and 4 herein.

10. Since the delay in conferment of pensionary benefits to the petitioner is attributable to the 3rd respondent, interest at the rate of 12% per annum shall be payable from the date of retirement of the petitioner till full and final settlement and such exercise is to be carried out within a period of eight weeks from the date of receipt of the communication to be received from the 5th respondent.

11. The writ petition stands disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

AP

To

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Cooperation, Food & Consumer Protection Department
Secretariat, Fort St George, Chennai 600 009.
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Vellore Region, Vellore District Collector
office campus, Vellore 632 009.
5. The Accountant General [A&E]
Anna Salai, Teynampet,
Chennai 600 018.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.8982
+1cc to Mr.G.Sankaran, Advocate, S.R.No.9257
+1cc to the Government Pleader, S.R.No.9064

W.P.No.3311/2017

RJ(CO)
CA(22/02/2017)

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