

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 2805 of 2011

S.Karunakaran

... Petitioner

Vs.

1. The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar, Adyar, Chennai 600 020.

2. The Special Officer,
Avinashi Co-operative Housing Society Limited,
No.S.L.M.H.SG 16
12/135 A V.O.C.Colony, Avinashi Road,
Coimbatore District.

... 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 records of the 1st respondent in relation to the proceedings issued in Rc.No.9120/2008/SF1 dated 03.07.2010 and quash the same in so far as it denies retirement benefits to the petitioner and declare that the said order is not a bar for the amount of gratuity payable to the petitioner and issue a consequential direction to the respondents to grant subscription of 2nd respondent society under provident Fund and to pay the amount under the Encashment of Earned Leave and the Subsistence Allowance for the period of suspension during the period of 01.11.2003 to 28.02.2007 with interest @ 18% per annum.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.V.Selvaraj, AGP

O R D E R

The writ petition is filed to call for the records of the 1st respondent in relation to the proceedings issued in Rc.No.9120/2008/SF1 dated 03.07.2010 and quash the same in so far as it denies retirement benefits to the petitioner and declare that the said order is not a bar for the amount of gratuity payable to the petitioner and issue a consequential

direction to the respondents to grant subscription for 2nd respondent society under provident Fund and to pay the amount under the Encashment of Earned Leave and the Subsistence Allowance for the period of suspension during the period of 01.11.2003 to 28.02.2007 with the interest @ 18% per annum.

2. Heard Mr.R.Saseetharan, learned counsel appearing for the petitioner and Mr.V.Selvaraj, learned Additional Government Pleader appearing for the Respondents.

3. The learned counsel for the petitioner submits that the petitioner challenges only the part of the order passed by the first respondent in proceeding Rc.No.9120/2008/SF1 dated 03.07.2010, that is in respect of denying the retirement benefits to the petitioner till the outcome of the Criminal case in CC.No.4 of 2005 on the file of the Chief Judicial Magistrate, Coimbatore, which was transferred to Tiruppur, in Spl. C.C.No.26 of 2014 pending before the Chief Judicial Magistrate, Tiruppur District. Further the learned counsel for the petitioner submits that the petitioner was placed on suspension from 10.09.2003, thereafter the Special Officer passed a dismissal order on 10.07.2008. Aggrieved by the said order the petitioner preferred the revision before the Revisional Authority viz., The Registrar of Cooperative Society (Housing), Chennai 35, under Section 153 of the Tamil Nadu Cooperative Societies Act 1983. After considering the case of the petitioner, the first respondent passed the impugned order dated 03.07.2010, by setting aside the order passed by the special officer and denied the retirement benefits to the petitioner till the final outcome of the Criminal Case pending before the Chief Judicial Magistrate, Tiruppur District in Spl. CC. No.26 of 2014. Accordingly, the petitioner preferred the above said writ petition before this Court on the ground that the respondent cannot withhold the provident fund and encashment of earned leave. Therefore the order passed by the first respondent to deny the retirement benefit to the petitioner is contrary to law.

4. According to the learned Additional Government Pleader, the case is pending before the Chief Judicial Magistrate, Tiruppur District in Spl. CC. No.26 of 2014 in the trial stage. Therefore, if any adverse order passed in the criminal case, against the petitioner he will not entitled to get retirement benefit. Hence the order passed by the first respondent is correct and the Writ Petition filed by the petitioner is liable to be dismissed. perfectly valid in law. The point for consideration in the Writ Petition is whether the terminal benefit of Provident Fund and encasement of earned leave, which is entitled to the petitioner, can be withheld by the respondent.

5. According to the learned counsel for the petitioner relying upon the decision of the judgment [(2014) 8 MLJ 482] in V.Sundaresan v. Joint Registrar of Coop. Societies, Cuddalore Region, Cuddalore District and Another, wherein paragraph 11 and 14 reads as follows:

11. He also relied on a Full Bench of the Punjab and Haryana High Court vide judgment dated 09.11.2012 in LPA No.113 of 2012, wherein, it is observed as follows:

"12. We are, therefore, in agreement with the view taken by the Division Bench of this Court in B.S.Gupta's case (supra) holding that amount of leave encasement is payable to the retiring employee notwithstanding the pendency of the departmental enquiry or criminal proceedings." and

12. Therefore, I am of the view that the respondents cannot withhold Provident Fund and Leave Encashment amount payable to the petitioner.

14. In this context, it is necessary to refer to Section 78 of the Tamil Nadu Cooperative Societies Act, which is as follows:-

"Provident Fund - (1) A registered Society not being an Establishment to which the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Central Act XIX of 1952) applies, may establish a Provident Fund for the benefit of its Employees to which shall be credited all contributions made by the Employees and the Society in accordance with the Bylaws."

6. The learned counsel for the petitioner would further submit that even though the relief prayed for seeking the gratuity amount was subsequently disbursed and the same was received by the petitioner. According to the learned counsel for the petitioner, the present relief as prayed is only with respect to provident fund and encashment of earned leave.

7. In the light of the above said order passed by this Court the respondent cannot withhold the Provident Fund and the encashment of the earned leave of the petitioner. Therefore, the impugned order dated 03.07.2010 is quashed, in so far as the (denial of retirement) benefits are concerned, and the respondents are directed to settle the provident fund and the encashment of earned leave to the petitioner within a period of 12 weeks from the date of receipt of a copy of this order and liberty is granted to the petitioner to make a representation to the authorities concerned for any arrears of salary, if it is permissible under law.

8. With above direction, the Writ petition is allowed.
No Costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jv

To

1. The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar, Adyar, Chennai 600 020.
2. The Special Officer,
Avinashi Co-operative Housing Society Limited,
No.S.L.M.H.SG 16, 12/135 A V.O.C.Colony, Avinashi Road,
Coimbatore District.

+1cc to Mr.R.Saseetharan,Advocate for the petitioner sr.4064

+1cc to Government Pleader sr.3650

+1cc to M/s.L.P.Shanmugasundaram,Advocate sr.3564

W.P. No. 2805 of 2011

kj (co)
ss (28/3/2017)

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