

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.28309 of 2011

and

M.P.No.1 of 2011

T.K.Palani

.. Petitioner

vs.

1.The Joint Registrar of
Co-operative Societies,
Vellore Region,
Vellore 632 001.

2.No.C.1965 Vellore District
Co-operative Printing
Press Ltd., Rep. by its
Special Officer,
Post Box No.175,
Vellore 632 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned orders passed by the second respondent dated 30.01.2010 based on the orders of the first respondent in Na.Ka.477/2010/A1, dated 29.01.2010 and quash the same in so far as it relates to the order "without prejudice to the pending disciplinary proceedings" and consequently, direct the respondents to settle the withheld terminal benefits of Gratuity etc., in terms of the petitioner's claim petition dated 01.03.2010 with 12% interest from the date of retirement within a reasonable period.

For Petitioner : Mr.M.Krishnamoorthy

For Respondents : Mrs.T.Girija, Govt. Advocate
for R.1

: Mr.L.P.Shanmuga Sundaram,
Spl. G.P for R.2

ORDER

The petitioner has filed this writ petition to call for the entire records relating to the impugned orders passed by the second respondent dated 30.01.2010 based on the orders of the first respondent in Na.Ka.477/2010/A1, dated 29.01.2010 and quash the same in so far as it relates the order "without prejudice to the pending disciplinary proceedings" and consequently, direct the respondents to settle the withheld terminal benefits of Gratuity etc., in terms of the petitioner's claim petition dated 01.03.2010 with 12% interest from the date of retirement within a reasonable period.

2. The learned counsel for the petitioner submitted that, the petitioner was working as Secretary of the Vellore District Co-operative Printing Press Ltd. He was issued with a charge memo on 08.11.2004. On receipt of the same, he submitted his explanation on 12.11.2004. But, the second respondent suspended the petitioner from service with effect from 16.11.2004. Thereafter, without conducting any enquiry, the second respondent dismissed the petitioner from service on 3.12.2004, against which, the petitioner filed revision application under Section 153 of the Tamil Nadu Co-operative Societies Act before the first respondent and the same was allowed on 23.05.2005 by directing the second respondent to proceed further the departmental proceedings in accordance with law. Subsequently, the second respondent conducted the domestic enquiry and the enquiry officer submitted the enquiry report holding that all the four charges have not been proved. Hence, the second respondent by order dated 15.09.2006 reinstated the petitioner into service. Again, the second respondent suspended the petitioner from service with effect from 11.12.2009. Thereafter, by order dated 29.01.2010 passed by the first respondent, the petitioner was permitted to retire from service on 31.01.2010 on attaining the age of superannuation. However, the second respondent has issued the impugned order dated 30.01.2010 permitting the petitioner to retire from service on attaining the age of superannuation "without prejudice to the disciplinary proceedings". But, he was not paid gratuity and leave salary of Rs.1,88,055/- besides the salary payable for the period from 16.11.2004 to 15.09.2006. As against the same, the petitioner filed an appeal before the Principal District Judge/Co-operative Tribunal at Vellore and the same is pending. Challenging the impugned order dated 29.01.2010 and 30.01.2010, the petitioner has come before this Court with the present writ petition.

3. The learned counsel for the petitioner has submitted that as per the decision of the Full Bench of this Court in the case of S.Andiyannan vs. The Joint Registrar, Co-operative

Societies, Madurai Region, Madurai and another (2015 (4) CTC 1), the employee is entitled to get full Retiral benefits. The learned counsel for the petitioner further submitted that since the petitioner was permitted to retire from service, no useful purpose would be served if the disciplinary proceedings would be continued after retirement. According to the decision cited supra, he has submitted that under the Tamil Nadu Co-operative Societies Act, 1983, once an employee has retired from service, there could be no authority vested with the employer for continuing any disciplinary proceeding, in the absence of relevant Service Rules permitting the employer to continue the disciplinary proceeding.

4. The learned Special Government Pleader appearing for the respondents has not disputed the decision laid down by the Full Bench of this Court (cited supra).

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

6. To dispose of this writ petition, it is useful to extract the relevant portion of the decision of the Full Bench of this Court in S.Andiyannan vs. The Joint Registrar, Co-operative Societies, Madurai Region, Maodurai and another (2015 (4) CTC 1), which reads as follows:

"13.The Hon'ble Supreme Court in Bhagirathi Jena v. Board of Directors, O.S.P.C., 1999 (3) SCC 666, has held that the Departmental Enquiry held in the absence of specific provision for its continuance, after retirement of an Employee, is against law. In the aforesaid decision, it was categorically found that in the absence of any provision to continue the Departmental Enquiry under the Orissa Financial State Corporation Staff Regulations, 1975, after the Employee attained superannuation is bad in law. It was further held that the Respondent-Corporation had no Legal Authority to make any reduction in the Employee's retiral benefits, since there was no provision for conducting a Disciplinary Enquiry after the Employee's retirement, nor there was any provision stating that in case of misconduct is established, a deduction could be made from the retiral benefits. Once an Employee retired from service, there could be no Authority vested with the Corporation for continuing the Departmental Enquiry even for the purpose of imposing any reduction in retiral benefits payable to the Employee in the absence of any provision under the Service Rules. In the

absence of such authority, it must be held that the enquiry had lapsed and the Employee was entitled to get full Retiral benefits.

30. Under the Tamil Nadu Co-operative Societies Act, 1983, once an Employee retired from service there could be no authority vested with the Employer for continuing any Disciplinary proceeding in the absence of relevant Service Rules permitting the Employer to continue the Disciplinary proceeding. In other words, if there is no Service Rules or Bye-law of the society empowering the Employer to continue the Departmental proceeding, the Employer, would have no authority to continue the Departmental proceedings after the retirement of the Employee."

7. Considering the fact that the decision of Full Bench of this Court (cited supra) is squarely applicable to the facts of the present case, this Court has no hesitation to set aside the impugned order passed by the second respondent. Accordingly, the impugned order passed by the second respondent is set aside and the writ petition is allowed. The petitioner is at liberty to approach the authority concerned to get the terminal benefits as per the order passed by this Court in W.P.No.37792 of 2015, dated 03.10.2016. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

cla

To

1.The Joint Registrar of
Co-operative Societies,
Vellore Region,
Vellore 632 001.

WEB COPY

2.Special Officer,
No.C.1965 Vellore District
Co-operative Printing
Press Ltd.,
Post Box No.175,
Vellore 632 001.

+1cc to Government Pleader sr.12173

+1cc to Mr.K.Premkumar, Advocate sr.11926

+1cc to Mr.L.P.Shanmugasundaram, Advocate sr.11751

W.P.No.28309 of 2011

kk(co)
ss(24/4/2017)



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