

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02-11-2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.14302 of 2012

V.Parthiban

.. Petitioner

versus

1. The Registrar of Co-operative Societies,
Kilpauk, Chennai-600 010.

2. The Joint Registrar of Co-operative Societies,
Thiruvallur District,
Thiruvallur.

3. The Deputy Registrar of Co-operative Societies,
Thiruthani Circle,
Thiruvallur District.

4. The Deputy Registrar of Co-operative Societies,
Tiruppattur Circle,
Vellore District.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, or any other Writ or order or direction in the nature of writ, calling for the records relating to the proceedings issued by the 2nd respondent in RC NO.3696/2010/A1 dated 28/06/2010 and quash the same and consequently direct the respondents to settle the retirement benefits to the petitioner as on the date of retirement on 30.6.2010 inclusive of promotion to the post of Deputy Registrar of Co-operative Society on par with juniors to the petitioner on notional basis with consequential retirement benefits along with interest for the salary in payment within a time frame to be fixed by this Court. [prayer amended as per order dated 03.06.2012 in MP.2/12 in WP.14302/12]

For Petitioner : Mr.G.Sankaran

For Respondents: Ms.T.Girija

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ to direct the respondents to settle the entire retirement benefits to the petitioner as on the date of retirement on 30.6.2010 inclusive of promotion to the post of Deputy Registrar of Co-operative Society on par with juniors to the petitioner on notional basis with consequential retirement benefits along with interest within a time frame to be fixed by this Court."

2. The petitioner was appointed as Junior Inspector-Auditor in Co-operative Department in the year 1975 through Tamil Nadu Public Service Commission. Thereafter, he was promoted to the post of Senior Inspector in the year 1982 and subsequently, he was given further promotion as Co-operative Sub-Registrar in the year 1995. While working as Co-operative Sub-Registrar, the petitioner was posted as Special Officer of Madappalli Farmer Services Co-operative Society for a brief period in the year 2001. While working as such, certain discrepancies were noticed in disbursement of consumer loans to the public. Therefore, an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act. The enquiry report was initially submitted stating that there were no discrepancies in the disbursement of loans. However, subsequently, another enquiry was conducted in which, it was found that consumer loans were given to few members irregularly and on the basis of the said report, a criminal case was foisted against the petitioner in C.C.No.11 of 2008 on the file of the Judicial Magistrate Court No.II, Vellore.

3. According to the petitioner, during pendency of the criminal case against him, though he came under the zone of consideration for promotion to the post of Deputy Registrar of Co-operative Society, he could not be included in the panel for the year 2009 onwards, whereas, his juniors had been empanelled and promoted. In the meanwhile, the Criminal Court, vide its judgment dated 28.7.2011, acquitted the petitioner by exonerating the petitioner from all the charges. During pendency of criminal case, the petitioner reached age of superannuation on 30.6.2010. However, in view of the pendency of the criminal case, the petitioner was placed under suspension on 20.6.2010. But no order was passed not permitting the petitioner to retire from service on his attaining the age of superannuation on 30.6.2010. In the said circumstances, the petitioner is deemed to have retired on attaining the age of superannuation. After being acquitted in criminal case on

28.7.2011, the petitioner submitted a representation for settlement of his retirement benefits since the same were withheld due to the pendency of the criminal case against him. Apart from the criminal case, there was no other disciplinary action was pending against the petitioner. However, in response to the representation of the petitioner, the fourth respondent issued a communication dated 24.2.2012 addressed to the third respondent stating that during the years 1990 and 1992 when the petitioner was in-charge Special Officer of Tiruppattur Co-operative Primary Agricultural Credit Society, due to certain discrepancies found against him in his discharge of duties, Section 81 enquiry was ordered and the enquiry report had recommended criminal and departmental actions apart from surcharge proceedings. It is relevant to mention here that for the discrepancies found during the years 1990 and 1992, an enquiry was initiated only in the year 2005 after a period of 13 years. The Secretary of the Co-operative Society was also subjected to 81 enquiry and he had approached this Court, challenging the 81 enquiry and this Court granted interim stay of further action in pursuant to 81 enquiry and the writ petition is still pending.

4. As regards the discrepancies noticed during stint of the petitioner in Tiruppattur Co-operative Primary Agricultural Credit Society in the years 1990-92, on the basis of the report conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, the fourth respondent had already passed orders on 22.6.1995 holding that there was no mismanagement in the society. However, notwithstanding the findings of the initial enquiry that there was no mismanagement, after a period of 13 years, another enquiry was conducted under Section 81 of the Act which recommended criminal, surcharge and departmental action against the Secretary of the Co-operative society. The cumulative effect of aforesaid action initiated against the petitioner was that although the petitioner stood retired from service on 30.6.2010, none of the retirement benefits as admissible to the petitioner have been settled and therefore, the petitioner was constrained to approach this Court, seeking to issue a Writ of Mandamus, to direct the respondents to settle his retirement benefits.

5. Upon notice, Ms.T.Girija, learned counsel entered appearance for the respondents 1 to 4 and filed a detailed counter affidavit, wherein, the facts as stated by the petitioner had not been controverted. The entire thrust and focus of the counter affidavit was that once an employee was suspended from service, it was not mandatory on the part of the department to intimate the employee with regard to retaining him in service even though he attained the age of superannuation. The very fact of suspension was only to

demonstrate that the petitioner was not permitted to retire from service. Further, it was stated that in view of further enquiry conducted under Section 81 of the Act in respect of his role as Special Officer in Tiruppur Co-operative Primary Agricultural Credit Society during the years 1990-92 in which, the departmental action, criminal and surcharge proceedings were still recommended to be initiated. Therefore, the respondents have rightly withheld the retirement benefits due to the petitioner. According to the respondents, if the retirement benefits ordered to be settled, then the respondents would be left with no effective option to proceed against the petitioner either by way of departmental or surcharge proceedings, as no amount could be recovered from the petitioner in the event of settlement of dues to him.

6. The learned counsel appearing for the respondents would reiterate the averments contained in the counter affidavit and added that as regards the departmental, surcharge and criminal actions which were recommended by the report under 81 enquiry conducted against the petitioner and the Secretary of the Society, the same could not be initiated in view of interim order passed by this Court in W.P.No.23190 of 2005 filed by the Secretary and the said writ petition is still pending.

7. Per contra, the learned counsel Mr.G.Sankaran, appearing for the petitioner would strongly contend that as regards the petitioner is concerned, till date there have been no surcharge proceedings nor departmental or criminal action initiated against him and therefore, it is not for the respondents to withhold the retirement benefits which are otherwise due to him under the Rules. According to him, once the petitioner was implicitly allowed to retire on 30.06.2010 by not passing any orders retaining him in service, the question of withholding the retirement benefits does not arise and such action withholding retirement benefits, cannot be countenanced both in law and on facts.

8. Mr.G.Sankaran, learned counsel for the petitioner, in the course of arguments, placed reliance upon the decision of the Division Bench of this Court reported in "2010(2) CTC 569 (M.K.S.Balasubramanian versus The Kancheepuram Central Co-operative Bank Ltd., rep. by its Special Officer)", wherein, the Division Bench has held that the employer has no reserving right to proceed with disciplinary proceedings while allowing the employee to retire unless rules provide for doing so.

9. In the instant case, the learned counsel would submit that the Rules do not provide reserving the right of the employer to proceed against the employee either departmentally or otherwise after the employee attained the age of

superannuation. Of-course, the learned counsel would concede as regards surcharge proceedings are concerned, that the same can be initiated even the employee retired from service. The learned counsel would further rely upon yet another order passed by the Division Bench of this Court in W.A.(MD) No.3 of 2011, dated 18.1.2011, wherein, it was held that the employee in the writ appeal, was entitled to terminal benefits payable to him if no surcharge proceedings under Section 81 of the Act were pending or initiated. In the same decision, it was also held that once the employee having been allowed to retire from service, cannot be proceeded against by departmental action.

10. The learned counsel also draw the attention of this Court to yet another decision reported in "(2012) 3 MLJ 913 (P.Thangavel versus Chairman, Common Cadre Committee/Joint Registrar of Cooperative Societies, Namakkal Region, Namakkal and another)", wherein, it has been held as follows:

"Law is settled that in the absence of rules empowering the Society to continue the disciplinary proceedings, no disciplinary proceedings can continue after the officer is allowed to retire, be it a case where right is reserved by the Society."

11. For better appreciation of the legal contentions put forth by the learned counsel for the petitioner, the relevant portion of the judgment of the Division Bench as found in paragraphs 9, 10 are extracted hereunder:

"9. Facts of this case are different, viz., an order has been passed permitting the Appellant to retire from service though reserving right to proceed with the disciplinary proceedings. Law is settled that in the absence of rules empowering the Society to continue the disciplinary proceedings, no disciplinary proceedings can continue after the officer is allowed to retire, be it a case where right is reserved by the Society. In that context, the above Judgment relied on by the Learned Counsel for the second respondent society is of no application to the facts of this case.

"10. The Learned Counsel for the Appellant also brought to our notice yet another Division Bench judgment of this Court reported in M.K.S. Balasubramanian v. Kancheepuram Central Cooperative Bank Ltd. rep. by its Special Officer 2010 (2) CTC 569, wherein the Division Bench was considering a case of Assistant Manager of a Cooperative Society, who was allowed to retire from service on 31.03.2005 without prejudice to the disciplinary proceedings. While considering that case, the Division Bench held that the Society has no power

to impose the condition reserving the right to proceed with disciplinary proceedings while allowing the Appellant to retire from service.

To draw the above conclusion, the Division Bench has relied upon the Judgment reported in *N. Kunnai Gounder v. The Coimbatore District Cooperative Milk Producers' Union Ltd.* 2007 (5) CTC 491; *F. Muthusamy v. Tamil Nadu Cements Corporation Ltd.* 2006 (4) MLJ 504. The Division Bench has also relied upon a decision of the Supreme Court reported in *Bhagsrathi Jena v. Board of Directors OSFC and Ors.* 1999 (3) SCC 666, wherein in paragraph 7, the Apex Court has observed as under:

In view of the absence of such a provision in the above said Regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the Appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the Appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the Appellant was entitled to full retiral benefits on retirement.

"11. Considering the above Judgments of the Division Bench, we are of the opinion that in view of the subsequent Division Bench judgment rendered on the question, the Cooperative Society cannot proceed with the disciplinary proceedings after the Secretary is allowed to retire from service, in the absence of any rules giving such power."

12. In view of the above factual and legal submissions, the learned counsel would strongly urge this Court that withholding of retirement benefits which are otherwise due to the petitioner cannot be a valid action on the part of the respondents and therefore, the same is liable to be interfered with by this Court. As regards the surcharge proceedings, the learned counsel would contend that such proceedings cannot be initiated after a long period, particularly in this case, where discrepancies were noticed during the time when the petitioner

was posted as Special Officer of Tiruppattur Co-operative Primary Agricultural Credit Society during the years 1990-92. Originally an enquiry was conducted and found that there was no mismanagement. But subsequently, it was again initiated after a period of 13 years in 2005 and in that report only, departmental, surcharge and criminal actions were recommended to be taken. Even thereafter, no action was initiated either by the department or by way of criminal or surcharge proceedings till date. Even though, the learned counsel appearing for the respondents would contend that no action was initiated in view of the interim order passed by this Court in the Writ Petition filed by the Secretary, however, the same cannot be the reason for holding back the retirement benefits for ad infinitum. This Court is in full agreement with the submissions made by the learned counsel for the petitioner that by citing pendency of the writ petition filed by the Secretary of the Society, an unfortunate predicament of the petitioner cannot be held to ransom for endless period and denial of retirement benefits due to him. The petitioner having attained the age of superannuation as early as on 30.06.2010, has already suffered grave hardship due to non-settlement of retirement benefits for seven years. The petitioner had also suffered great prejudice in view of the fact that his further promotion as Deputy Registrar of Co-operative Society had been denied in view of pendency of criminal case against him during the relevant period, which however ended in acquittal in 2011. Therefore, the petitioner over a period of time, was made to suffer double jeopardy although the ruling of this Court held that surcharge proceedings can be initiated even against retired employee. But, this Court is of the view that whether such surcharge proceedings can be initiated after a period of 25 years when admittedly, the discrepancies were found when the petitioner was in-charge of Tiruppattur Co-operative Primary Agricultural Credit Society during the years 1990-92. If such open-ended interpretation is given for initiating surcharge proceedings at any point of time, that would result in negation of valuable right of the employee for speedy trial and remedy in respect of any adverse action initiated against them. Therefore, this Court is of the considered view that mere pendency of the writ petition cannot be a reason for withholding the retirement benefits due to the petitioner. The petitioner having been acquitted in the criminal case and the suspension order was solely on the basis of the pendency of the criminal case and no departmental action was pending and on that account, the suspension itself subsequently became unjustified. Therefore, there was no justification for denying the other service benefits to the petitioner when the same became due during the relevant period when the petitioner was placed under suspension and the criminal action was pending. It is also to be pointed that once the petitioner was exonerated of the criminal charges

in 2011, the authorities concerned in order to continue the action against the petitioner, had racked up by yet another issue against the petitioner with regard to his role as Special Officer of Tiruppattur Co-operative Primary Agricultural Credit Society during 1990-92. Such action on the part of the respondents lacks bona fides and cannot be countenanced both in law and on facts.

13. Therefore, for all the above said reasons, this Court allows the Writ Petition and a Writ of Mandamus is issued, directing the respondents to settle the entire retirement benefits due and payable to the petitioner on his attaining the age of superannuation on 30.6.2010 and also grant promotion to the post of Deputy Registrar of Co-operative Society on par with his juniors on notional basis with consequential benefits of such promotion, if the petitioner was otherwise fit for promotion during the relevant time. The said direction shall be complied with by the respondents, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operative Societies,
Kilpauk, Chennai-600 010.

2. The Joint Registrar of Co-operative Societies,
Thiruvallur District,
Thiruvallur.

3. The Deputy Registrar of Co-operative Societies,
Thiruthani Circle,
Thiruvallur District.

4. The Deputy Registrar of Co-operative Societies,
Tiruppattur Circle,
Vellore District.

+1cc to the Government Pleader, S.R.No. 78277

+1cc to Mr.G.SANKARAN Advocate, S.R.No. 13996(04/01/2017)

W.P.No.14302 of 2012

ev (CO)

TR(03/01/2018)