IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.3714 of 2012

S.S.Hariharan .. Petitioner

Vs.

1.Commissioner of Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Madhavaram, Chennai - 51.

2.Tamil Nadu Co-operative Milk
Producers Federation Limited,
Managing Director,
Aavin Illam, Madhavaram Milk Colony,
Madhavaram, Chennai - 51. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus after calling for the concerned records from the first respondent, quash the order of the first respondent dated 16.05.2011 in R.C.No.1566/10/M1 and consequently direct the second respondent to pay the subsistence allowance to the petitioner from 29.08.2008 to 29.03.2010 being the date of dismissal.

For Petitioner .. Mr.R.Kamatchi Sundaresan
for M/s.Balan Haridas

For Respondents.. Mr.L.P.Shanmugha Sundaram,
Spl. Govt. Pleader for R1
Mr.R.Bala Ramesh for R2

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus after calling for the concerned records from the first respondent, quash the order of the first respondent dated 16.05.2011 in R.C.No.1566/10/M1 and consequently direct the second respondent to pay the subsistence allowance to the petitioner from 29.08.2008 to 29.03.2010 being the date of dismissal.

2.The case of the petitioner is that he joined the services of the second respondent Federation in the year 1994. While he was working as General Manager (Finance), a charge memo was issued on 25.04.2008 containing four articles of charges. The charges relate to the period from 13.07.1993 to 31.07.1996 when the petitioner was working as Manager (Finance) and Senior Manager (Finance). Not satisfied with the explanation offered by the petitioner, an enquiry was conducted into the charges. The petitioner was also placed under suspension on 28.09.2008 by invoking Rule 4 of the Tamil Nadu Co-operative Milk Producers' Federation Employees (Conduct, Discipline and Appeal) Rules (for short 'the TCMPF Rules'). According to the petitioner, while he was placed under suspension, the management failed to pay the admissible subsistence allowance under the TCMPF Rules. Therefore, he submitted a representation on 24.09.2008 requested for payment of subsistence allowance. In the meanwhile, the petitioner had attained the age of superannuation on 31.08.2008. While so, the second respondent issued a show cause notice enclosing the enquiry report dated 26.08.2008 and proposed the punishment of compulsory retirement and recovery. In the said circumstances, the petitioner preferred a revision petition under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 seeking a direction to the second respondent to pay subsistence allowance from 29.08.2008, the date on which the petitioner was placed under suspension and pay arrears of subsistence allowance till the completion of the disciplinary proceedings pending against him.

3.When the revision petition was pending before the first respondent, the second respondent imposed the punishment of compulsory retirement by order dated 29.03.2010. Thereafter, the first respondent passed an order in the revision petition on 16.05.2011 directing the second respondent to pay subsistence allowance as paid in the case of one Dr.R.Periyasamy for the period from 01.09.2008 till 29.03.2010. The petitioner is aggrieved by the order passed by the first respondent, granting a meagre sum of Rs.28,062/- towards subsistence allowance for the period in question since according to him the subsistence allowance had not been revised periodically under Rule 5 of the TCMPF Rules. Therefore, according to the petitioner, he was entitled to be paid more than Rs.5 lakhs towards subsistence allowance and he was paid a meagre amount of Rs.28,062/- which is contrary to the said Rule.

4.Upon notice, Mr.L.P.Shanmugha Sundaram, learned Special Government Pleader entered appearance on behalf of the first respondent and Mr.R.Bala Ramesh, learned counsel entered appearance on behalf of the second respondent and filed a detailed counter affidavit. In the counter affidavit, it is clearly stated that as per Rule 15 of the TCMPF Rules, the payment of subsistence allowance after an employee attains the age of superannuation is always subject to minimum pension entitled to be received by the employee concerned, if he or she was allowed to retire normally. According to the counter affidavit, the Federation has no specific scheme for providing pensionary benefits to the retired employee. The pension scheme as adopted by the Employees Provident Fund alone is being followed. Such being the case, the minimum pension allowed by the EPF organisation has been taken as minimum pension as mentioned under the clause of the Special Byelaws. For the purpose of clarity, Rule 15 is extracted below:

> "15.Retirement when enquiry is pending: For persons against whom grave charges are pending, retirement benefits will be settled after the charges are disposed off, in cases where an individual continues to be under suspension due to pendency of disciplinary proceedings after attaining the age of superannuation, he/she shall continue to draw the subsistence allowance subject to a minimum pension is entitled to receive, if he/she is allowed to retire normally."

5.Mr.R.Kamatchi Sundaresan, learned counsel appearing for the petitioner would submit that as per Rule 5 of the TCMPF Rules, the petitioner is entitled to subsistence allowance on the basis of his prolonged suspension and it had to be revised periodically in terms of the said Rule. Opposing the same, learned counsel for the second respondent would submit that since the petitioner was not borne on the pensionable establishment, he was not entitled to subsistence allowance as per Rule 5 after the date of his superannuation and the payment of subsistence allowance was subject to the minimum pension which the petitioner is entitled to draw if he is allowed to retire normally.

6.The contention putforth by the learned counsel for the second respondent has considerable force as the scheme of the Rules would reveal that the employee who would have normally retired is not entitled to subsistence allowance beyond the date of superannuation as per Rule 5 of TCMPF Rules. If such interpretation is accepted, as contended by the learned counsel for the petitioner, then the employee would get windfall by being placed under suspension and he would derive more financial benefits by being a suspended employee than the normal retiree. Such a windfall benefit cannot be read into the scheme.

7.For the aforesaid reasons, this Court finds that there is no merit in the writ petition and therefore, the same stands dismissed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

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To

1.The Commissioner of Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Madhavaram, Chennai - 51.

2.The Managing Director,
Tamil Nadu Co-operative Milk
Producers Federation Limited,
Aavin Illam, Madhavaram Milk Colony,
Madhavaram, Chennai - 51.

+1cc to Mr.Balan Haridas, Advocate sr.68448

+1cc to Government Pleader sr.69404

W.P.No.3714 of 2012

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ss(26/10/2017()