



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. [MD] .No.32 of 2014

and

M.P. (MD)No.1 of 2014

WEB COPY

The President,
O.647, Pandarakulam Primary
Agricultural Co-operative Society,
Kilavaneri Post, Radhapuram Taluk,
Tirunelveli District.

: Appellant

Vs.

- 1.S.Bensigar
- 2.The Registrar of Co-operative Societies,
No.170, EVR Periyar High Road,
Kilpauk, Chennai-600 010.
- 3.The Joint Registrar of Co-operative Societies,
O/o. the Joint Registrar of Co-operative Societies,
Tirunelveli.
- 4.The Deputy Registrar of Co-operative Societies,
O/o. the Deputy Registrar of Co-operative Societies,
Cheranmahadevi Post,
Tirunelveli District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 17.10.2012, made in W.P.(MD)No.487 of 2012.

Prayer in WP(MD) 487/2012:

Writ petition is filed under Article 226 of the Constitution of India, praying this Court to Issue a WRIT OF MANDAMUS, to direct the 4th Respondent to consider the Petitioner representation dated 09-12-2011 and to grant Petitioner's Retirement benefits with in a stipulated time may be fixed by this Honourable Court.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondent No.1 : Mr.M.Saravanakumar

JUDGMENT

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

This Writ Appeal is directed against the order passed by the Writ Court dated 17.10.2012, made in W.P.(MD)No.487 of 2012, whereby and whereunder, the learned Single Judge allowed the Writ Petition filed by the first respondent herein and directed the appellant and the respondents 2 to 4 herein to release the retiral benefits to the first respondent including the provident fund due, within two months.

2. The brief facts, which are necessary for disposal of the Writ Appeal, are as follows:

The first respondent herein was appointed as Secretary in the appellant Society, in the year 1975. His service was regularized and he was confirmed on successful completion of the probation period. He served for the Society for 35 years. His service conditions were governed by statutory rules i.e., common cadre service framed under Tamil Nadu Co-operative Societies Act. He was allowed to retire from service on attaining the age of superannuation on 03.03.2011. However, in spite of making representation, he was not given the retiral benefits. Hence, the Writ Petition.

3. In the Writ Petition, counter was filed by the appellant herein stating that the only ground for non-payment of retiral benefits is financial difficulty faced by the Society. Further stand taken by the Society is that the provident fund amount cannot be released to the first respondent, as he has not paid the provident fund contribution.

4. However, the learned Single Judge allowed the Writ Petition by observing that the financial condition of the society cannot be a ground to deny the retiral benefits to the employee and the appellant and the respondents 2 to 4 are bound to release whatever provident fund is lying in the account of the first respondent. Aggrieved over the said order, the Society is before this Court with the present Writ Appeal.

5. The learned counsel for the appellant submits that due to financial constraint, the Society are not in a position to pay the retiral benefits to the first respondent. Furthermore, since the first respondent failed to deposit the provident fund contribution, he is not entitled to the provident fund.

6. The learned counsel for the first respondent submits that financial constraint of the Society cannot be a ground to deny such benefit to the first respondent, which he is legally entitled to.

7. Keeping in mind the above said submissions made by the learned counsel on either side, we are also of the view that the learned Single Judge has correctly dealt with the issue and the finding of the learned Judge that financial constraint of the Society cannot be a ground to deny the legitimate claim of the first respondent, viz., retiral benefits, holds good. Thus, we find no infirmity in the order impugned in the Writ Appeal and the same does not warrant interference at the hands of this Court. Therefore, the Writ Appeal is dismissed, however, with a direction to the appellant to pay the retiral benefits to the first respondent including the provident fund due with appropriate interest, within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petition is closed.



To

1.The Registrar of Co-operative Societies,
No.170, EVR Periyar High Road,
Kilpauk, Chennai-600 010.

2.The Joint Registrar of Co-operative Societies,
O/o. the Joint Registrar of Co-operative Societies,
Tirunelveli.

3.The Deputy Registrar of Co-operative Societies,
O/o. the Deputy Registrar of Co-operative Societies,
Cheranmahadevi Post,
Tirunelveli District.

+1cc to Mr.G.PrabhuRajadurai, Advocate, SR NO.2142

+1cc to Mr. M.Saravanakumar, Advocate, SR NO:1895

+1cc to SPECIAL GOVERNMENT PLEADER, SR NO:2508

SML

sva/ss2/ksm/27.01.2017/3p/7c

JUDGMENT MADE IN
W.A.[MD].No.32 of 2014
Dated: 10.01.2017