



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.(MD) No.13858 of 2011

P.Sivakami Pillai

... Petitioner

Vs.

1.The Secretary to Government,
Co-operation, Food and Consumer
Protection (C1.I) Department,
Fort St. George,
Chennai 600 009.

2.The Registrar of Co-operative Societies,
170, EVR High Road,
Kilpauk, Chennai - 10.

3.The Joint Registrar of Co-operative Societies,
55,Kosamada Street,
Tiruvannamalai 606 601.

4.The Deputy Registrar of Co-op. Societies,
55,Kosamada Street,
Tiruvannamalai 606 601.

... Respondents

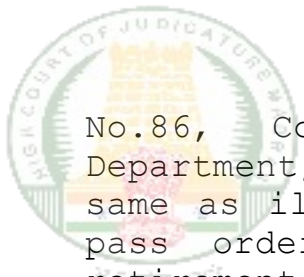
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the suspension order passed in G.O(D).No.86, Co-operation, Food and Consumer Protection (C1.I) Department dated 29.04.1998 against the petitioner and quash the same as illegal and consequently, direct the first respondent to pass orders revoking the suspension order and to grant the retirement benefits and pension benefits to the petitioner.

For Petitioner : Mr.R.Ramachandran

For Respondents : Mr.V.Muruganandam
Additional Government Pleader

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/>
The prayer in the writ petition is for a writ of Certiorarified Mandamus to call for the records of the first respondent relating to the suspension order passed in G.O(D).



No.86, Co-operation, Food and Consumer Protection (C1.I) Department, dated 29.04.1998, against the petitioner and quash the same as illegal and consequently, direct the first respondent to pass orders revoking the suspension order and to grant the retirement benefits and pension benefits to the petitioner.

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2. The petitioner was appointed as typist at the Office of the Deputy Registrar of Co-operative Societies, Ramanathapuram on 16.05.1965. Thereafter, he was promoted as Senior Inspector of Co-operative Societies and transferred to Arupukottai on 23.03.1987. While so, on 29.04.1998, i.e., one day prior to his superannuation, the present impugned order was issued, whereby the petitioner was not permitted to retire. According to the impugned order, two enquiries were contemplated against the petitioner, one is under Section 17(b) and another one is 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as well as pendency of a criminal case. Though the petitioner has not been permitted to retire on his superannuation, even after 18 years no progress has been shown in the disciplinary proceedings allegedly pending against the petitioner. Therefore, the petitioner has come out with the present writ petition, challenging the said impugned order, dated 29.04.1998.

3. Heard both sides.

4. The learned counsel for the petitioner would contend that the petitioner has not involved any criminal action nor violated any relevant Service Rules and therefore, he was unnecessarily inflicted on a criminal case, where he was arrested and was in judicial custody for more than 48 hours. Therefore, he was placed under suspension by the order of the respondent dated 24.08.1997 and thereafter, no progress has been shown in the disciplinary proceedings allegedly taken against him and ultimately, when he was about to retire on superannuation on 30.04.1998, one day prior to the said date, the present impugned order, dated 29.04.1998 was issued, whereby the petitioner was not permitted to retire. With the result, his retirement and pensionary benefits has not been given to the petitioner.

5. The learned counsel for the petitioner would also contend that though a criminal case was pending all along, there is no considerable progress has been shown in the criminal case also and still the same is pending.

6. Insofar as the departmental proceedings mentioned in the impugned order is concerned, no enquiry has been conducted and no progress has been shown in the said enquiry proceedings departmentally initiated against the petitioner and nearly about
<https://hdcourtservicescourtservices.in> since no progress has been shown in the departmental proceedings, it shows that the respondents have no interest in concluding the departmental proceedings and only for name sake, it



was initiated to keep the petitioner under suspension and to keep him without permitting him to allow to retire. Therefore, the petitioner being the senior citizen at the age of 77 years is suffering at his old age, hence interference of the Court in the order impugned is essential, he submits.

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7. Per contra, the learned Additional Government Pleader appearing for the respondent would contend that for the petitioner having been arrested and was in judicial custody for more than 48 hours in a criminal case, he was suspended from service on 29.04.1998, when he attained the age of superannuation on 30.04.1998. Therefore, the petitioner was not permitted to retire from service, as both the criminal case as well as the disciplinary proceedings initiated against him were pending. Therefore, his service was retained as per Rule 56(1)(c) of F.R. as well as vide G.O.(D).No.86, Co-operation Food and Consumer Protection Department, dated 29.04.1988, apart from criminal case which was pending against him. As it has been admitted by the petitioner that the criminal case is still pending and the petitioner has not been acquitted at the judicial Magistrate Court, Tuticorin in C.C.No.57 of 1999, even though the charge memo has been given to the petitioner. Further, two charges framed against the petitioner departmentally dated 11.02.1993 and 17.09.1997 are still pending for the alleged misappropriation for an amount of Rs.7,458/- and the said amount has not been remitted by the individual and also the pendency of the criminal case before the Judicial Magistrate Court at Tuticorin, the petitioner was not permitted to retire from service on superannuation and therefore, challenging the same, the petitioner had filed this writ petition in the year 2011 without facing the charges framed against him. Therefore, no interference is required in the impugned order.

8. This Court have considered the rival submissions made by the learned counsel for both sides and the materials placed before this Court for perusal.

9. Admittedly, two charge memos were issued against the petitioner, one in the year 1993 dated 11.02.1993, another in the year 1997 i.e., dated 17.09.1997 for an alleged misappropriation of sum of Rs.7,458/- and other related misdeeds. For the same misappropriation, he was arrested by the District Crime Branch, Tuticorin and he was in judicial custody for more than 48 hours. Therefore, on this ground, he was suspended from service in the year 1997. Though he was under suspension for one year, no progress had been shown neither in the departmental enquiry nor in the criminal case. In the mean time, since the petitioner had attained the age of superannuation on 30.04.1998, the respondents, <https://hcservicesapp.hcservices.gov.in/hcservices/> impugned order, had not been permitted the petitioner to retire from service.



10. This kind of power is always vests in the employers to retain the service of the erring employees and not permitting him to retire for the purpose of conducting the departmental enquiry/proceedings initiated already against the said employee. Therefore, at this point of time, this Court cannot find any fault for issuance of impugned order in the year 1998, not permitting the petitioner to retire.

11. However, after the said impugned order passed in the year 1998, 18 years have passed, even today there is no progress in the departmental proceedings as no enquiry was conducted, pursuant to the charges framed against the petitioner. Such a long years if the respondents have not shown any progress in the departmental proceedings, it can be construed that the department does not have any interest to proceed against the petitioner. Insofar as the criminal case is concerned, if the said criminal case is for alleged misappropriation of Rs.7,458/-, a person cannot wait for a judicial verdict for nearly about two decades. The long waiting on the part of the petitioner itself, in the opinion of this Court, without getting any fruits of his retirement and pensionary benefits for nearly about two decades, is a punishment. Therefore, this Court considered the said circumstances, wherein no progress has been shown in the departmental proceedings for more than 18 years and the criminal case pending against the petitioner also has not concluded for all these years, further keeping the petitioner under suspension by not permitting him to retire peacefully from service even though he attained the age of superannuation in the year 1998 itself, is totally unjustifiable. Therefore, it requires interference by this Court.

12. In the result, the writ petition is allowed with the following terms.

(i) the impugned order, for the only reason that no departmental proceedings has been continued or progressed for more then 18 years, is quashed.

(ii) the petitioner shall be permitted to retire from service peacefully from the date of his superannuation and based on which, he shall be paid the retirement and pensionary benefits for which he is entitled to, for all these years immediately.

(iii) The aforesaid 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.

(iv) The petitioner shall also be entitled to claim continuous pension every month till his entitlement.

(v) It is needless to state that if any verdict has come from the competent criminal Court where the criminal case against the petitioner is pending, naturally the petitioner shall be bound by the said decision and that will not in any way stand the compliance of the aforesaid direction by the respondents.



13. With these directions, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (T&P)

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/True Copy/

Sub Assistant Registrar

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To

1.The Secretary to Government,
Co-operation, Food and Consumer
Protection (Cl.I) Department,
Fort St. George,
Chennai 600 009.

2.The Registrar of Co-operative Societies,
170, EVR High Road,
Kilpauk, Chennai - 10.

3.The Joint Registrar of Co-operative Societies,
55,Kosamada Street,
Tiruvannamalai 606 601.

4.The Deputy Registrar of Co-op. Societies,
55,Kosamada Street,
Tiruvannamalai 606 601.

+1cc to Mr.R.Rama Chandran, Advocate Sr.No. 1742

+1cc to Spl.Government Pleader Sr.No. 1794

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