

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.1093 of 2011

K.Karunanidhi

.. Petitioner

vs.

1.The Co-operative Tribunal,
(Principal District Judge),
Krishnagiri.

2.The Deputy Registrar of Co-op. Societies,
Dharmapuri.

3.The Management,
D.D.87, Palacode Primary Agricultural,
Co-Op, Bank Ltd.,
Palacode, Dharmapuri District.

... Respondents

Prayer.: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records culminating in the impugned order of the 1st respondent Tribunal dated 22.04.2009 in C.M.A. (C.S.)No.27/2008 and quash the same insofar as it's non awarding of benefits of Encashment of Earned Leave Surrender and Interest thereby direct the 3rd respondent to pay the petitioner his terminal benefits as claimed in Arbitration Reference Case No.5792/2006 on the file of the second respondent with interest till the date of payment within a reasonable time as fixed by this Court.

For Petitioners : Mr.S.V.Jeevagiridharan

For R2 : Mr.L.P.Shanmuga Sundaram
Spl.Govt.Pleader.

For R3 : Mr.M.S.Palanisamy

For R1 : Tribunal

O R D E R

Challenging the impugned order passed by the first respondent dated 22.04.2009, the petitioner seeking relief for the award passed by the respondent in respect of gratuity, provident fund and encashment of earned leave with interest.

2. The case of the petitioner is as follows:

The petitioner was originally working as Attender as daily wages employee on 15.03.1991 and he was given consolidated pay from 01.07.1991. Thereafter, the petitioner was promoted as Clerk on 09.08.2000. In the mean time, the petitioner was selected as B.T.Assistant and he resigned his job from the 3rd respondent society with effect from 07.07.2004. The petitioner sent several representation to the third respondent with regard to delay in paying the terminal benefits to the petitioner. But the third respondent did not pay the above said benefits. Hence, the petitioner filed the Arbitration Reference Case No.5792 of 2006 before the second respondent under Section 90 of the Tamil Nadu Co-Operative Societies Act and the same was awarded on 20.04.2007 directing the 3rd respondent to pay the petitioner the Security Deposit, E.P.F. Gratuity and arrears of pay without interest and also declaring that he is not entitled for the employer's contribution towards E.P.F. and the encashment of earned leave surrender. Challenging the said award, the petitioner has filed an appeal in C.M.A.(C.S.)No.27 of 2007 before the 1st respondent under Section 152 of the Tamil Nadu Co-Operative Societies Act. The said appeal was partly allowed and directing the third respondent to pay the petitioner's claim except Encashment of Earned Leave Surrender with interest. Thereafter, the petitioner filed Review Petition No.45 of 2009 before the 1st respondent under Section 154 of the Tamil Nadu Co-Operative Societies Act and the same was dismissed on 28.06.2010. Aggrieved by the said dismissal order, the petitioner has filed the present writ petition this Court.

3. The learned counsel for the petitioner would submit that there is an inordinate delay in payment of retirement benefits to the petitioner by the respondent Society. Therefore, the petitioner is entitled for the retirement benefits with interest. The Tribunal, without considering the fact had erroneously dismissed the claim of the petitioner.

4. The learned counsel for the respondents would submit that the award passed by the second respondent dated 20.04.2007 was dismissed and thereafter, the appeal has been preferred

before the first respondent and the first respondent has passed an order, dated 22.04.2009. Thereafter, the petitioner has filed the present writ petition challenging the disallowing the encashment of earned leave. Therefore, the petitioner is not entitled for the delayed payment with interest for the pendency of the proceedings before the authority concerned. But, however, after advancing the argument, he is confined to make his submission, that the petitioner, at any event, is entitled for interest.

5. Considering the aforesaid submission made by the both parties, the impugned order passed by the Tribunal is modified for granting the interest from the date of filing of the claim petition, i.e. 10.10.2006 till 20.04.2007 at the rate of 4% p.a. and the same shall be paid within a period of three months from the date of receipt of a copy of this order. So far as the other contention of the petitioner that the encashment of earned leave is concerned, the relevant para-6 of the Judgment in Review Petition No.45 of 2008 in CMA CS.No.27 of 2008 dated 28.06.2010, is as follows:

" After taking into consideration both sides learned counsel's arguments and on perusal of the appeal judgment this Court's opinion is that the review petitioner's contention is not sustainable one. Further, this Court has gone through the Trial Court Judgment the then learned Principal District Judge has not specifically discussed in his Judgment in respect of the interest of repayment. Only the then learned Principal District Judge has ordered the petitioner is entitled to getting the interest to the said amount. In this aspect, Law permitted that if any apparent of mistake on records, the petitioner is entitled to file the review petition to review the order to rectify the error committed by the officer. But in the present case, the above said apparent of mistake was not made in order passed by the then learned Principal District Judge, Dharmapuri. Therefore, the ingredients of section 152 of Tamil nadu Co-operative Societies Act, is not applicable in the present fact of this case. This Court's opinion is that the review petitioner is aggrieved the order he seeking passed by the then Principal District Judge, he ought to have file appeal before competent authority. Hence, the memorandum of grounds in Review Petition is not maintainable one. Hence, this petition is dismissed."

6. In the light of the aforesaid Judgment, the petitioner is entitled for the encashment of E.L as claimed by the petitioner and in the light of the above said facts and circumstances, this Court is inclined to pass the following orders:

i) The impugned Judgment in CMA.(C.S.)No.27 of 23008 dated 22.04.2009 passed by the first respondent is liable to be set aside.

ii) The third respondent is directed to settle the encashment of E.L. as claimed against the writ petition within a period of three months from the date of receipt of a copy of this order.

iii) The third respondent shall pay the interest at the rate of 4% p.a. from the date of filing of the claim petition i.e 10.10.2006 to 20.04.2007 to the petitioner and also the petitioner is entitled to interest for the aforesaid Encashment of Earned Leave.

With the above observation, this writ petition is allowed.
No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

kkd

To

1.The Co-operative Tribunal,
(Principal District Judge),
Krishnagiri.

2.The Deputy Registrar of Co-op. Societies,
Dharmapuri.

3.The Management,
D.D.87, Palacode Primary Agricultural,
Co-Op, Bank Ltd.,
Palacode, Dharmapuri District.

+1cc to Mr.V.Jeevagiridharan, Advocate SR.No.83417

+1cc to Mr.M.S.Palaniswamy, Advocate SR.No.83436

+1cc to Government Pleader SR.No.83604

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JP (CO)
GMY (31/01/2019)



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