IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1173 of 2017

R.Thiyagarajan ... Appellant

versus

1.The Commissioner for Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.

2.The Managing Director,
TCMPF Ltd.,
Aavin Illam,
Madhavaram Milk Colony,
Chennai 600 051. ... Respondents

PRAYER:
Appeal filed under clause 15 of the letters patent against the order passed by this Court dated 02.06.2017 made in W.P.No.12067 of 2017.

W.P.No.12067 of 2017:-
Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 & 2 to disburse the gratuity amount payable to the petitioner in respect of the service rendered by the petitioner together with interest at the rate of 12% per annum from the date of his retirement viz. 31.01.2016 till the date of disbursal as per the rules in force

For Appellant : Mr.K.S.Viswanathan

For Respondents : Mr.S.T.S.Moorthy,
Additional Advocate General
Assisted by Mrs.T.Girija,
Government Advocate

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this intra-Court appeal is to the order of the learned Single Judge made in W.P.No.12067 of 2017 dated 02.06.2017, in and by which, the learned Single Judge while rejecting the prayer for mandamus directing disbursal of the gratuity and the retirement benefits, directed the respondents to take steps to dispose of the surcharge proceedings initiated against the petitioner and the audit objection within a period of six months from the date of receipt of a copy of the order.

2. The appellant sought for issuance of a Writ of Mandamus as aforesaid contending that though he was allowed to retire from the service by the proceedings dated 28.01.2016, the Authorities had withheld the terminal benefits payable to him citing pendency of the audit objections and arbitration case pending against the petitioner at the Salem District Co-operative Milk Producers Union Limited. Despite several representation made by the petitioner seeking payment of the terminal benefits the same was not granted, hence, he sought for issuance of a Writ of Mandamus as aforesaid.

3. The Writ Petition was resisted by the respondents stating that the surcharge proceedings initiated against the appellant are pending and certain audit objections raised while he was serving at Vellore and Dharmapuri were also pending Audit Rectification Committee.

4. Taking note of the above submissions of the learned Government Pleader, the learned Single Judge had directed disposal of the surcharge proceedings as well as audit objections. Aggrieved the petitioner has come forward with this appeal.

5. We have heard Mr.K.S.Viswanathan, learned counsel appearing for the appellant and Mr.S.T.S.Moorthy, learned Additional Advocate General assisted by Mrs.T.Girija, learned Government Advocate for the respondents.

6. Mr.K.S.Viswanathan, learned counsel appearing for the appellant would submit that there are no surcharge proceedings pending against the appellant. He would contend that it is only based on the audit objections the retirement benefits had been withheld. When this appeal was posted before the Division Bench on 05.02.2018, the learned counsel appearing for the respondent sought time to get instructions with regard to the present position of the surcharge proceedings and the appeal was time and again adjourned for the said purpose.

7. On 26.03.2018, the learned counsel appearing for the respondents on instructions submitted that the respondents have decided to write off the loss sustained by the Society. However, the said decision has to be approved by the Committee constituted for the said purpose. Recording the statement of the learned Counsel, the Division Bench had directed the respondents to take a decision and submit a report by 23.04.2018.

8. On 23.04.2018, the learned counsel appearing for the respondents had submitted that after the culmination of the surcharge proceedings, it was decided by the Society to write off the loss sustained by the Society. According to the learned counsel for the respondents, the Committee will be meeting on 02.05.2018 to take decision in the matter. In view of the scheduled meeting on 02.05.2018 we had adjourned the appeal to 14.06.2018. Thereafter, the above appeal was listed for hearing on 19.06.2018 and upon request of the learned counsel for the respondents the matter was adjourned to 03.07.2018.

9. On 03.07.2018, the learned counsel appearing for the respondents sought for further time, considering the fact that the appeal had been adjourned time and again to await the decision of the Committee we had passed the following orders:

> "We make it clear that the respondents must take a decision as undertaken by them earlier and communicate the same to this Court on or before 25.07.2018 failing which the Managing Director, Salem District Co-operative Milk Producers Union Limited, shall appear in person on 26.07.2018."

10. Thus, the matter was listed before us on 25.07.2018, on the said date, the learned Special Government Pleader produced Cheque for Rs.10,00,000/- being gratuity payable to the appellant. The learned Special Government Pleader appearing for the respondents sought time for filing an affidavit by the General Manager, Salem District Co-operative Milk Producers Union Limited indicating that there are no proceedings pending as against the appellant including the surcharge proceedings. Conceding his request the matter was posted on 30.07.2018 under the caption "for orders".

11. On 30.07.2018, Mr.R.S.Pugalendhi, General Manager of the Salem District Co-operative Milk Producers Union Ltd., appeared in Court and had stated that the Audit Rectification Committee had met and had decided to write of the loss, however, the minutes were not signed yet. Finding that the respondents are causing undue delay, we had required the members of the Audit Rectification Committee viz., Mr.R.Muniraj, Deputy Milk Commissioner, Ms.P.Kumareeswari, Joint Director of Audit/ Member

Convener and Mr.C.Ravi, General Manager Finance, Tamil Nadu Co-operative Milk Producers Federation/ Member as well as Mr.R.S.Pugalendhi, General Manager, Salem District Co-operative Milk Producers Union Ltd., were directed to appear before us in person on 01.08.2018. The General Manager was also directed to produce the original minutes prepared on 20.06.2018 for our perusal. Consequent upon the direction the aforesaid Officials were present before the Court.

12. Mr.S.T.S.Moorthy, learned Additional Advocate General had produced the copies of the original minutes, in and by which, a decision was taken to write off the loss by the Salem District Co-operative Milk Producers Union Ltd. It is however stated by the learned Additional Advocate General that, the Union cannot decide on writing off the loss, in view of Section 178 of the Tamil Nadu Co-operative Societies Act which provides for a decision to write off could be taken only by the general body with the approval of the Registrar of the Co-operative Society.

13. Mr.R.Muniraj, Deputy Milk Commissioner, who is also the Chairman of the Audit Rectification Committee has filed an affidavit to the effect that though the Audit Rectification Committee had in principle accepted the proposed waiver, the decision should however be taken by the Board of the Salem District Co-operative Milk Producers Union Ltd., with the approval of the Registrar of Co-operative Society which is likely to take some time.

14. Mr.R.S.Pugalendhi, General Manager of the Salem District Co-operative Milk Producers Union Ltd., has also filed a separate affidavit in which he had stated that though the Board has proposed to write off the loss the same was not accepted by the Audit Rectification committee, in view of the provisions of Section 178 of the Tamil Nadu Co-operative Society Act. He would also state that the entire retirement benefits of the appellant would be settled once the proposal to write off is approved by the Registrar of Co-operative Society.

15. Mr.S.T.S.Moorthy, learned Additional Advocate General appearing for the respondents would submit that the respondents have in principle agreed to write off the loss and pay retirement benefits payable to the appellant. The necessary formalities for getting the approval from the Registrar of Co-operative Society have to be complied with before the actual payment is made. Mr.S.T.S.Moorthy, would also submit that it will take a minimum of six weeks for the respondents to comply with the statutory requirements before making payment. The said statement of the learned Additional Advocate General is recorded.

16. In view of the statement made by the learned Additional Advocate General as well as the affidavit filed by the General Manager of the Salem District Co-operative Milk Producers Union Ltd., as well as the Chairman of the Audit Rectification Committee nothing survives for adjudication in this appeal. We therefore dispose of the appeal with directions to the respondents to get necessary approval for the decision to write off the loss and pay the retirement benefits within a period of eight (8) weeks from the date of receipt of a copy of this order. However, in the circumstances there will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Commissioner for Milk Production and
Dairy Development,
Madhavaram Milk Colony,
Chennai - 600 051.

2.The Managing Director,
TCMPF Ltd., Aavin Illam,
Madhavaram Milk Colony,
Chennai 600 051.

+1cc to Mr.V.Sudhakar, Advocate, S.R.No.52285
+1cc to the Government Pleader, S.R.No.53284

W.A.No.1173 of 2017

VSN-II(CO)
CS/30/08/18