

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.25799 of 2018
and
W.M.P.No.30008 of 2018

M.Elumalai

...Petitioner

Vs

- 1.The Joint Registrar of Co-operative Societies,
Villupuram Region,
Master Complex,
Villupuram - 605 602.
- 2.The Deputy Registrar of Co-operative Societies,
Tindivanam - 604 001.
- 3.The Management,
CL.Spl.148, Melpakkam Primary Agricultural
Co-operative Credit Society,
Rep.by its Administrator,
Melpakkam Village,
Iyyanthope Post,
Tindivanam Taluk,
Villupuram District- 604 307. ...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of declaration, declaring the order of the 3rd respondent dated 31.05.2018 insofar as retiring the petitioner without prejudice to the proceedings initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and without terminal benefits and stating that the retirement order will be decided based on the enquiry report under Section 81 as illegal, arbitrary and contrary to law and consequently direct the respondents to pay all the terminal benefits of the petitioner, such as, Gratuity, Provident Fund, Earned Leave Encashment along with interest at the rate of 12% per annum from the date when it became payable within the time frame stipulated by this Court.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

O R D E R

The relief sought for in this writ petition is to declare the order of the third respondent dated 31.05.2018, insofar as it relates to allow the petitioner to retire, without prejudice to the proceedings initiated under Section 81 of the Tamil Nadu Co-operative Societies Act and without terminal benefits, as illegal, arbitrary and contrary to law and consequently direct the respondents to pay all the terminal benefits along with interest at the rate of 12% per annum, within a time frame to be stipulated by this Court.

2.The brief facts of the case are that the petitioner joined as a Salesman in the third respondent Society in the year 1987. Later, he got various promotions and rendered unblemished service and he was about to retire from service with effect from 31.05.2018. While so, the third respondent, by order dated 15.05.2018, directed the petitioner to hand over the charges to one Poomalai, Head Clerk. Pursuant to the same, he handed over the charges to the aforesaid person on 19.05.2018. Subsequently, the third respondent issued an order dated 31.05.2018 stating that the petitioner was relieved from service, without prejudice to the proceedings under Section 81 of the Tamil Nadu Co-Operative Societies Act and without any terminal benefits. According to the petitioner, there is no Section 81 proceedings initiated against him and no report was served on him. Hence, he has filed the present writ petition for the aforesaid relief.

3.The learned counsel for the petitioner submitted that there was no proceedings either initiated or pending against the petitioner under Section 81 of the Tamil Nadu Co-operative Societies Act. Further, no notice or report was served on the petitioner. In such circumstances, the act of the third respondent in withholding the terminal benefits payable to the petitioner, is arbitrary, illegal and contrary to law. In support of his submission, the learned counsel relied on a judgment of the Division Bench of this Court dated 23.04.2014 made in W.A.No.1856 of 2012 [R.Murugesan v. The Joint Registrar of Cooperative Societies, Thiruvannamalai and another], wherein, it was held that even surcharge proceedings are pending, the petitioner cannot be denied payment of terminal benefits. Hence, the learned counsel sought a direction to the third respondent to consider the claim of the petitioner seeking terminal benefits.

4.Conceding the submission of the learned counsel for the petitioner that pendency of the surcharge proceedings cannot be a bar for payment of terminal

benefits, Mr.L.P.Shanmugasundaram, learned Special Government Pleader appearing for the respondents has no serious objection in directing the third respondent to consider the claim of the petitioner for payment of terminal benefits, however, without prejudice to the right of the third respondent Society.

5. Heard both sides and perused the documents, more particularly, the copy of the judgment dated 23.04.2014 made in W.A.No.1856 of 2012 (cited supra), wherein, it was held by the Division Bench that after attaining the age of superannuation, in the absence of any rule or bye-law, it is not open to the respondents to continue the disciplinary proceedings and ultimately, the respondents were directed to confer all the statutory and other entitlements due and payable to the appellant. The relevant passage of the said judgment is profitably extracted hereunder:

"7. In yet another judgment of this Court made in W.P.No.27170 of 2011, dated 29.11.2013, wherein one of us (NPVJ) is a member, a similar issue was considered in the light of the decision reported in 2012 (3) CTC 488 (P.Thangavel vs. The Chairman, Common Cadre Committee/Joint Registrar of Co-operative Societies), and M.K.S.Balasubramanian's case was also considered and all other decisions on that legal point, have been submitted and this Court held that the Co-operative employee cannot be kept under suspension beyond the date of superannuation, as there is no provision either under the Tamil Nadu Co-operative Societies Act or under the bye-laws and granted liberty to initiate surcharge proceedings for the alleged loss.

8. This Court, vide order dated 21.4.2014, has directed the learned Special Government Pleader appearing for the respondents, to produce the bye-laws, if any, authorising the society to continue the disciplinary proceedings against the co-operative employee, after reaching the age of superannuation. Now, it is the submission of the learned Special Government Pleader for the respondents, on instructions, that no such provision is available in the bye-laws and the said submission is placed on record.

9. This Court, on analysis of the facts placed before it, and consideration of the rival submissions, is of the view that the principles laid down in the above said decision, is

squarely applicable to the facts of this case for the reason that admittedly, after attaining the age of superannuation, in the absence of any rule or bye-law, it is not open to the respondents to continue the disciplinary proceedings.

10. Therefore, the writ appeal is allowed and the impugned order passed in this writ petition and the order dated 3.12.2008 passed by the first respondent is set aside and the writ petition is allowed. It is represented that the surcharge proceeding has already been initiated against the appellant and challenging the legality of the same, he filed an appeal before the jurisdictional Special Tribunal for co-operative cases with an application for condonation of delay and the said application is pending.

11. In view of the same, respondents are at liberty to contest the said appeal. The respondents are also directed to confer the statutory and other entitlements due and payable to the appellant in accordance with law, as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

6. Following the aforesaid judgment, which holds good in respect of the petitioner herein, who retired from service, vide order of the third respondent dated 31.05.2018, this Court deems it appropriate to direct the third respondent to disburse the terminal benefits due and payable to the petitioner, however, without prejudice to the right of the third respondent Society. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Registrar of Co-operative Societies,
Villupuram Region,
Master Complex,
Villupuram - 605 602.

2.The Deputy Registrar of Co-operative Societies,
Tindivanam - 604 001.

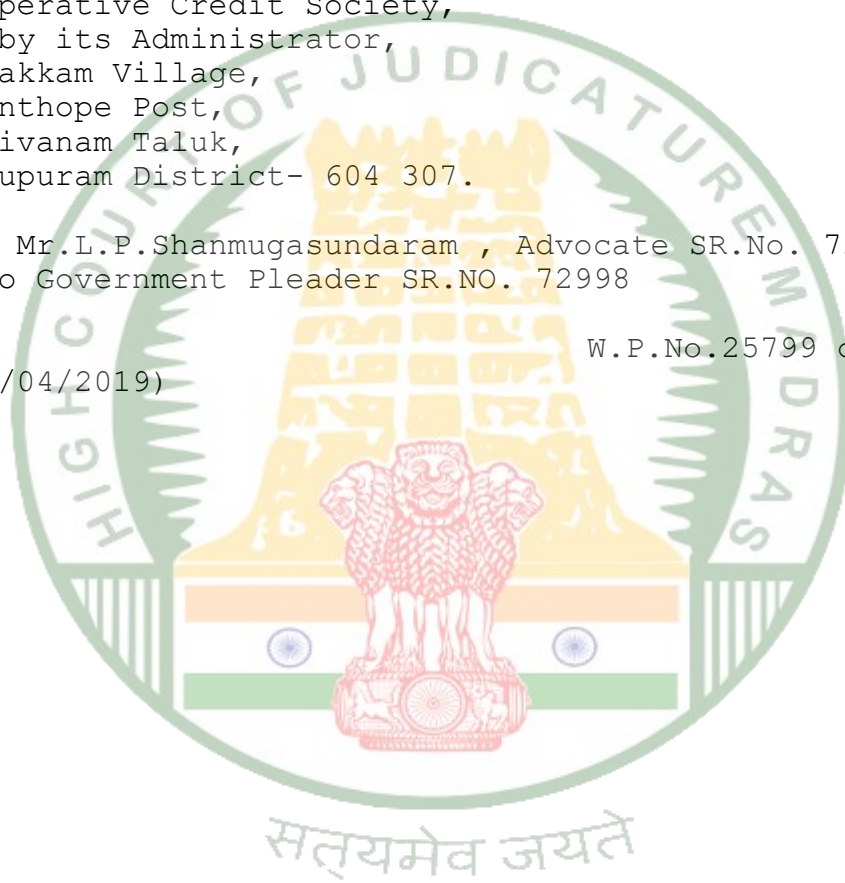
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Villupuram District- 604 307.

+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 72361

+1 cc to Government Pleader SR.NO. 72998

W.P.No.25799 of 2018

A.SK(22/04/2019)



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