



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.987 of 2018

S.Vijayakumar

...Petitioner

Vs.

1.The Secretary to Government,
Co-operative Department,
Secretariat, Chennai-600 009.

2.The Registrar of Co-operative Societies,
E.V.R.Maligai, Kilpauk,
Chennai-600 010.

3.The Joint Registrar of Co-operative Societies,
Kanjirangal,
Sivagangai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent i.e., the Joint Registrar of Co-operative Societies, Sivagangai in his ந.க.1996/2016/படுதா நாள் 09.11.2017 and quash the same and consequently direct the respondents to send the pension proposals of the petitioner to the Accountant General, Chennai within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.By consent of both the parties, the main Writ Petition is taken up for final disposal.



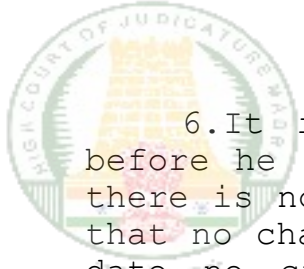
3. The petitioner was working as Co-operative Sub Registrar. He reached the age of superannuation on 31.05.2016. On the eve of his retirement, he was placed under suspension and not allowed to retire. Vide another order dated 30.05.2016, the petitioner was retained in service.

4. A mere look at the recitals of the said order would show that the petitioner was placed under suspension by order dated 30.05.2016 since certain charges and criminal cases into grave charges against the petitioner were being contemplated. It is further seen that he was not permitted to retire. The petitioner was retained in service. The petitioner thereafter submitted representations. By order dated 09.11.2017, which is impugned in this Writ Petition, the petitioner was informed that it is proposed to initiate criminal prosecution against the petitioner based on the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.

5. It is made clear that this Court is not expressing any opinion as to whether the petitioner should be prosecuted or not. It is also not expressing any opinion with regard to the further action to be taken by the authorities based on the report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. The only question to be covered to in this Writ Petition is whether the authorities are justified in not permitting the petitioner to retire from service. In this regard, the relevant provision would be FR 56 1(C). The said provision reads as under:-

Notwithstanding anything contained in clause

- (a) a Government Servant who is under suspension,
 - (i) on a charge or misconduct; or
 - (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or
 - (iii) against whom an enquiry into grave charges is contemplated or is pending ; or
 - (iv) against whom a complaint of criminal offence is under investigation or trial, shall not be permitted by the *appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or be any higher authority.



6.It is true that the petitioner was suspended from service before he reached the age of superannuation. But, then, till date there is no enquiry pending against the petitioner. It is admitted that no charge memo has been issued. It is also admitted that till date no criminal prosecution is pending against the petitioner. Only if disciplinary action or criminal prosecution is pending, a suspended Government servant will not be allowed to retire, but retained in service. This condition is not fulfilled in this case. Merely, because the Government is intending to initiate action based on the enquiry report submitted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, the petitioner cannot be retained in service. It is also seen that the cause of action referred to by the respondents dates back to the year 2002. In these circumstances, the order impugned in the Writ Petition is quashed.

7.The respondents are directed to send the pension proposals of the petitioner to The Accountant General, Office of the Accountant General, (Accounts and Entitlements), 261, Anna Salai, Chennai, on or before 30.05.2018.

The Writ Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government,
Co-operative Department,
Secretariat, Chennai-600 009.

2.The Registrar of Co-operative Societies,
E.V.R.Maligai, Kilpauk,
Chennai-600 010.

3.The Joint Registrar of Co-operative Societies,
Kanjirangal, Sivagangai.

+1cc to Mr.S.Visvalingam, Advocate, SR.No.51070

+1cc to The Special Government Pleader, SR.No.51622

tsg

RL/6C/3P/KK/SAR1/27/4/2018

W.P. (MD) .No.987 of 2018

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