



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.17311 of 2017

and

W.M.P (MD) No.13852 of 2017

Subbaraman

... Petitioner

Vs

The Managing Director/Joint Registrar,
Pudhukottai District Central Cooperative,
Bank Limited, No.834-836,
Keelaraja Veedhi,
Pudhukottai District.

... Respondent

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 pertaining to the respondent made in Na.Ka.No.227/03-04/E1 dated 10.07.2017 and to quash the same as illegal and consequently direct the respondent to disburse the petitioner's Death-cum-Retirement Gratuity, General Provident Fund and leave encashment within a stipulated time as may be fixed by this Court.

For Petitioner : Mr.M.Sridharan

For Respondent : Mr.Shanmugaraja Sethupathy

O R D E R

The petitioner was working as Cashier in the respondent society. He reached the age of superannuation on 31.03.2017. On the said date, the respondent passed an order relieving the petitioner from service without prejudice to the criminal prosecution that was pending against him in Crime No.1 of 2012 on the file of CCIW/CID, Pudukottai. Since the petitioner's terminal benefits were not disbursed, he filed W.P(MD)No.8062 of 2017 before this Court. This Court directed the respondent to pass orders on the petitioner's representation. Thereafter, the respondent passed the order dated 10.07.2017 taking the stand that since the criminal prosecution is still pending, it is not possible to disburse the benefit payable to the petitioner. The said order is assailed in this writ petition.

2.The learned counsel appearing for the respondent contended that in the special bye law, there is a provision for retaining the petitioner in service. He also would contend that any conviction suffered in a criminal prosecution would act as a disqualification.



3.However, this Court is of the view that the case on hand will have to be decided based on the order that was passed on 31.03.2017. The order impugned in this writ petition is more in the nature of a clarification or explanation. Since such an order was passed after the writ petitioner reached the age of superannuation, this Court will not take the same into account.

4.It is not in dispute that for the delinquency committed by the writ petitioner, he was issued with a charge memo. The said proceeding concluded as early as on 10.12.2013. He was imposed with the punishment of stoppage of increments for two years without cumulative effect. Thus, as on 31.03.2017 there was no disciplinary action pending against the writ petitioner. It is also not in dispute that the writ petitioner compensated the respondent society for the loss alleged to have been caused on his account and that there are no surcharge proceedings also is pending against the writ petitioner. The only proceedings that was pending against the petitioner was the criminal prosecution.

5.But then on 31.03.2017, the respondent did not retain the petitioner in service. The respondent did not pass any order to the effect that the writ petitioner is not being allowed to retire. On the other hand, the petitioner was relieved from bank service. It is true that the said order dated 31.03.2017 stated that this would be without prejudice to the criminal prosecution pending against the writ petitioner. This obviously goes without saying. The writ petitioner has to necessarily face the music in the criminal court. But then on that account, the writ petitioner's service benefits cannot be withheld. The reference to Section 77 of the Tamil Nadu Cooperative Societies Act will not be any avail. The said provision will obviously be applicable to serving employees or an employee who was not allowed to retire. Therefore, once the writ petitioner reached the age of superannuation, the relationship of master and servant snapped at that very moment.

6.In this view of the matter, the order impugned in this writ petition is quashed. The respondent is directed to disburse the terminal benefits payable to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

7.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar



To

The Managing Director/Joint Registrar,
Pudhukottai District Central Cooperative,
Bank Limited, No.834-836,
Keelaraja Veedhi,
Pudhukottai District.

+1cc to Mr.M.Sridharan, Advocate, SR.No. 53156

+1cc to Mr.D.Shanmugaraja sethupathi, Advocate, SR.No.53127

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