

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1466 of 2015
and
M.P. No. 1 of 2015

1. The Registrar of Co-operative Societies,
E.V.R. Periyar Salai,
Kilpauk,
Chennai - 600 010.
 2. The Deputy Registrar of Co-operative Societies,
Namakkal Circle,
RMS Complex, Trichy Main Road,
Namakkal.
 3. The President,
No. 1775, Vettambadi Primary Agricultural
Co-operative Credit Society,
Vettambadi - 637 405,
Namakkal Taluk and District.
- ... Appellants/Respondents

-vs-

A. Sengodan ... Respondents/Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order passed by the Learned Judge in W.P. No. 22892 of 2015 dated 29.07.2015 by allowing this Writ Appeal. Issuance of a Writ of Certiorarified mandamus to call for the records on the file of the second respondent relating to the retirement order issued by the second respondent in Na.Ka.No.2244/2015 Tho.Ve.Se., dated 08.04.2015 and quash the same and direct the second respondent to give the retirement benefits and other monetary benefits to the petitioner.

For Appellants : Mr. L.P. Shanmugasundaram
Special Government Pleader

For Respondent : Mr. R. Chandrasekaran

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 29.07.2015 passed by the Learned Judge in W.P. No. 22892 of 2015. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner was employed as Writer in the Co-operative Society of the Third Respondent. The surcharge proceedings under the Tamil Nadu Co-operative Societies, Act, 1983, were initiated against the Petitioner and he was held liable for a sum of Rs.33,01,000/- along with certain other co-employees jointly and severally. The Petitioner had filed statutory Appeal in C.M.A. (CS) No. 8 of 2012 before the Principal District Court, Namakkal. Since the Petitioner was attaining the age of superannuation on 30.04.2015 and the aforesaid Appeal filed by him against the surcharge proceedings was then pending, the Second Respondent by Letter No. Na. Ka. 2244/2015 Tho.Ve.Se dated 08.04.2015 directed the Third Respondent to merely relieve the Petitioner from service on 30.04.2015 when he attained the age of superannuation and had instructed to withhold all his terminal benefits.

3. The Petitioner filed W.P. No. 22892 of 2015 challenging the aforesaid Letter No. Na. Ka. 2244/2015 Tho.Ve.Se dated 08.04.2015 sent by the Second Respondent to the Third Respondent and had sought for consequential direction to disburse his terminal benefits.

4. The Learned Judge, who heard the matter by order dated 29.07.2015 after extensive discussion of the various statutory provisions including the Payment of Gratuity Act, 1972, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Sections 78 and 79 of the Tamil Nadu Co-operative Societies Act, 1983, came to the conclusion that none of the terminal benefits could be withheld in the absence of any statutory provision enabling the same. The Third Respondent was directed to settle the terminal benefits including Provident Fund, Gratuity, leave encashment and other benefits connected thereto, within a period of eight weeks from that date.

Aggrieved thereby, the present Writ Appeal has been preferred by the Respondents.

5. We have heard Mr. L.P. Shanmugasundaram, Special Government Pleader appearing on behalf of the Respondents and Mr. R. Chandrasekaran, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

6. We are in agreement with the reasoning of the Writ Court that in the absence of an enabling statutory provision, it would not be permissible for the employer to withhold the terminal benefits of a retired employee. This view is fortified by the decision of the Division Bench of this Court in Joint Registrar of Co-operative Societies -vs- K. Ambarayan (Judgment dated 11.04.2018 in W.A. Nos. 663 and 668 of 2015), in which, one of us (K.K. Sasidharan, J) is a party. The eligible amount of terminal benefits shall be disbursed to the Petitioner under written acknowledgment and a report of compliance shall be filed before the Registrar (Judicial) of this Court by 15.03.2019.

7. In the upshot, the Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

vjt

To

1. The Registrar of Co-operative Societies,
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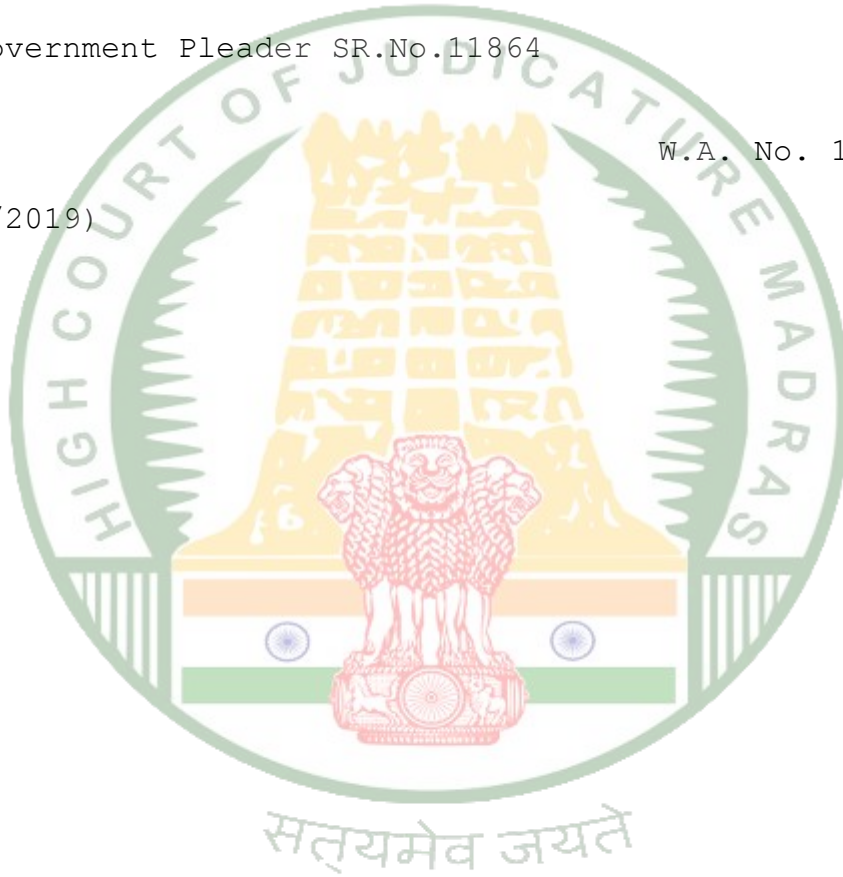
+1cc to Mr.R.Chandrasekaran, Advocate SR.No.11493

+1cc to Mr.L.P.Shangasundram, Advocate SR.No.11995

+1cc to Government Pleader SR.No.11864

W.A. No. 1466 of 2015

RSV(CO)
GMY(20/02/2019)



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