

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2019

CORAM:
THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.16339 of 2009

F.X.Fernando

.. Petitioner

Vs

1.The Secretary,
Government of Tamil Nadu
Cooperation Food and Consumer
Protection Department,
Fort St. George, Chennai - 9.

2.The Registrar of Cooperative Societies,
170, Periyar E.V.R.Road,
Kilpauk, Chennai - 10.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent in Letter No.7726/CH1/2009-2, dated 17.06.2009, quash the same and direct the first respondent to pay interest at 18% per annum on House Rent Allowance and City Compensatory Allowance, that became due from 01.12.1998.

For petitioner : Mr.N.Pooranalingam

For Respondents : Mr.K.Ravikumar, AGP

ORDER

This writ petition is directed against the impugned proceedings dated 17.06.2009 of the first respondent / the Secretary, Cooperation Food and Consumer Protection Department, Chennai, refusing to pay the interest on the belated payment made towards House Rent Allowance and City Compensatory Allowance.

2. The petitioner was directly recruited as Deputy Registrar of Cooperative Societies on 15.02.1969. He was also subsequently promoted to the post of Joint Registrar and Additional Registrar of the Cooperative Societies Department. While working in the said post, he attained the superannuation

on 30.11.1998, however, the Government, vide G.O.(3D) No.16, Cooperation, Food and Consumer Protection Department, dated 30.11.1998, did not permit him to retire from the services and on the said day itself, another G.O.2(D).No.87, Cooperation, Food and Consumer Protection Department, dated 30.11.1998, was issued placing him under suspension under Rule 17(e) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Finally, after the conclusion of the enquiry, he was exonerated from all the charges levelled against him. After a period of six years from the date of his superannuation i.e., 30.11.1998, the respondents/Department, vide G.O.3(D) No.21, Cooperation, Food and Consumer Protection Department, dated 13.11.2006, permitted him to retire from the services with effect from 30.11.1998.

3. It is submitted by the learned counsel for the petitioner that as per Rule 53(5) of the Fundamental Rules, the petitioner is entitled to get Dearness Allowance, House Rent Allowance and City Compensatory Allowance as admissible prior to the date of his superannuation for the period from 30.11.1998 (the date on which he attained the superannuation) till 13.11.2006 (the date on which he was permitted to retire from the services). Hence, he pleaded, during the period of suspension i.e., from 30.11.1998 to 12.11.2006, the petitioner is entitled for the payment of House Rent Allowance and City Compensatory Allowance, for, no punishment was inflicted against him. Subsequently, on receipt of the representation dated 16.05.2007 of the petitioner, the first respondent, vide G.O.(D) No.121, Cooperation, Food and Consumer Protection Department, dated 09.04.2008, fixing the House Rent Allowance and City Compensatory Allowance at Rs.1,81,323/-, paid the same to him, vide Cheque No.011860, dated 28.01.2009. However, it is pleaded, as the payment towards House Rent Allowance and City Compensatory Allowance was made belatedly, the petitioner is entitled to receive the interest at the rate of 18% per annum.

4. Learned Additional Government Pleader appearing for the respondents, by filing a counter affidavit, submitted that the prayer of the petitioner cannot be granted as there is no provision in Fundamental Rules to pay the interest. As per Rule 53(5) of the Fundamental Rules, only House Rent Allowance and City Compensatory Allowance have to be paid from 30.11.1998 (the date on which he attained the age of superannuation) till 13.11.2006 (the date on which he was permitted to retire from the services), therefore, the prayer of the petitioner seeking to the pay the interest for the belated period is liable to be rejected as there is no provision in Fundamental Rules to pay the interest.

5. Heard the learned counsel appearing on either side.

6. To answer the claim of the petitioner, it is relevant to extract Rule 53(5) of the Fundamental Rules, which is quoted below:-

"53(5) If a Government servant under suspension continues to be under suspension after the date of superannuation in view of pending disciplinary proceedings against him, and is fully exonerated from the charges against him later, he shall be paid dearness allowance as admissible on normal superannuation and house rent allowance and city compensatory allowance as admissible prior to the date of superannuation for the period from the date subsequent to the date of superannuation till the date on which final orders on the disciplinary proceedings are issued."

A perusal of the above said provision clearly says that if a Government servant under suspension continues to be under suspension after the superannuation in view of pending disciplinary proceedings against him, and is fully exonerated from the charges against him later, he shall be paid with Dearness Allowance as admissible on normal superannuation and House Rent Allowance and City Compensatory Allowance as admissible prior to the date of his superannuation. Therefore, as per the said provision, the petitioner has been sanctioned with the House Rent Allowance and City Compensatory Allowance by the respondents Department, however, with a delay of 2 years and 3 months i.e., only on 28.01.2009, as the petitioner, after exoneration of all the charges, was admittedly permitted to retire from the services on 13.11.2006. In view of such delay, although the petitioner did not commit any fault, he was forced to bear the day-to-day expenses from his own packet.

7. Thus, in view of the forgoing reasons, the impugned order refusing to pay the interest on the belated payment is set aside. The first respondent is directed to pay the interest at the rate of 9% per annum for the period from 13.11.2006 (the date on which he was permitted to retire) till 28.01.2009 (the date on which payment towards House Rent Allowance and City Compensatory Allowance was made), within a period of four weeks from the date of receipt of a copy of this order. With this direction, the writ petition is allowed. No Costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Secretary,
Government of Tamil Nadu
Cooperation Food and Consumer
Protection Department,
Fort St. George, Chennai - 9.

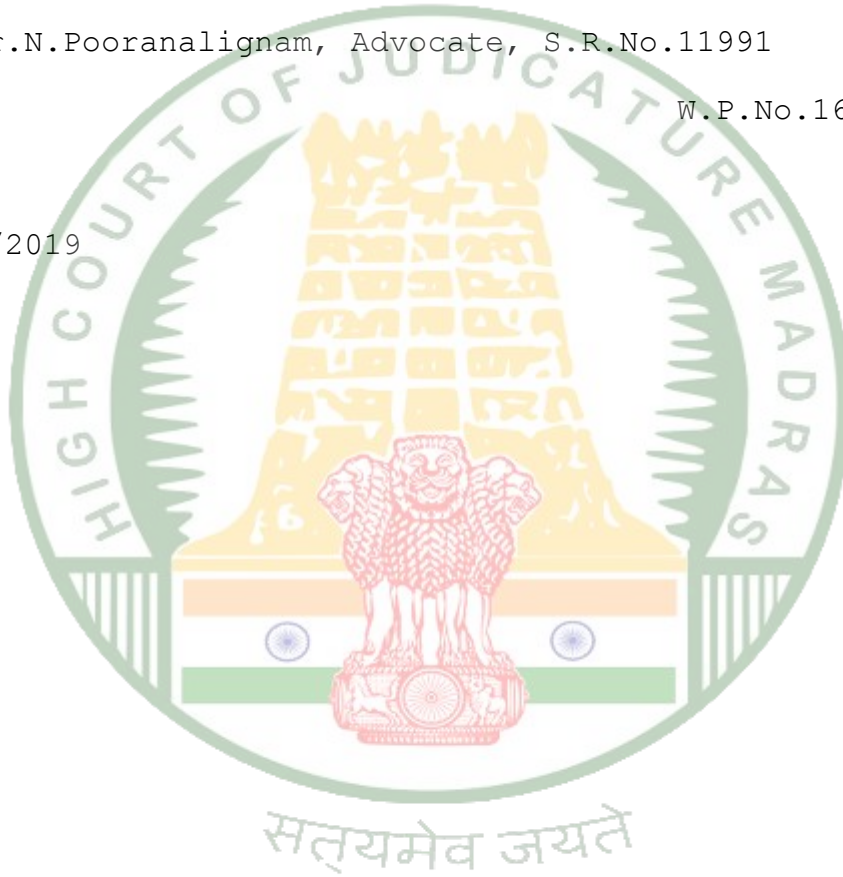
2.The Registrar of Cooperative Societies,
170, Periyar E.V.R.Road,
Kilpauk, Chennai - 10.

+lcc to Mr.N.Pooranalignam, Advocate, S.R.No.11991

W.P.No.16339 of 2009

MR(CO)

rrs 13/03/2019



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