

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/10/2019

C O R A M

The Honourable Mr. Justice SUBRAMONIUM PRASAD

Writ Petition No.20749 of 2013

T.Murugan

...

Petitioner

Vs

1. The Joint Registrar of Co-operative Society
Vellore Zone
Vellore.

2. The Management
Nemmili Co-operative Primary Agricultural
and Rural Development Bank Limited
Nemmili
Arakonam Taluk
Vellore District.

....

Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, to call for the concerned records from the first respondent, quash the order of the first respondent dated 23/4/2013 bearing Na.Ka.No.5390/2012 A 2 (Review Petition No.1/2012/A2 and consequently direct the second respondent to pay Rs.2,57,256/- being towards difference in gratuity, difference in surrender leave, amount deducted towards cost of litigation, amount deducted towards Employees Provident Fund alleged excess payment, amount deducted towards advance increment, salary for 19 days, amount deducted towards travelling allowance bill and amount kept in suspense account, along with interest at the rate of 18% per annum from the date when became payable viz., 30/4/2007, award costs.

For petitioner ... Mr.Balan Haridas

For respondents ... Mr.L.P.Shanmugasundaram
Special Government Pleader
(Co-op Society)
for R.R.1 and 2.

O R D E R

Instant writ petition is to quash the order, dated 23/4/2013 of the Joint Registrar of Co-operative Society, Vellore, first respondent and consequently, direct the second respondent, to pay Rs.2,57,256/-, towards difference in

gratuity, difference in surrender leave, amount deducted towards cost of litigation, amount deducted towards Employees Provident Fund alleged excess payment, amount deducted towards advance increment, salary for 19 days, amount deducted towards travelling allowance bill and amount kept in suspense account, along with interest, at the rate of 18% per annum.

2. Petitioner was promoted as an Assistant Secretary, on 1/6/1999. A memo was issued to the petitioner, on 30/10/2003, and by an order, dated 26/5/2004, petitioner was dismissed from service. Order of dismissal was challenged, in W.P.No.15157 of 2004. Vide, order, dated 1/9/2006, writ petition was disposed of, permitting the petitioner to file a Revision, under Section 153 of the Tamil Nadu Co-operative Societies Act. Petitioner preferred a revision before the first respondent and the said revision was taken on file, as Review Petition No.22 of 2006 and the same was disposed of, by an order, dated 11/4/2007, wherein the first respondent, modified the punishment, as one of demotion to the post of Supervisor and the period of non-employment should be treated as one on leave, without wages.

3. After being unsuccessful in the review petition, petitioner filed W.P.No.32815 of 2007, challenging the order of demotion. Writ petition was dismissed, by an order, dated 2/2/2010. Being

aggrieved, petitioner filed Writ Appeal being W.A.No.1233 of 2010. A Hon'ble Division Bench of this Court, by an order, dated 12/7/2011, allowed the writ appeal, by holding, as under:-

"The only question to be considered is as to whether the appellant could claim the benefit of an order that has been passed in favour of the Secretary. The fact remains that the application was processed through the Secretary and it has been sanctioned by the competent authority. The appellant, of course, being in the capacity of Assistant Secretary, was entitled to receive the application and forward the same to the Secretary with his recommendation. In case, the application ought not to have been recommended, the Secretary could have refused the same for further consideration by the competent authority. In fact, the Secretary, having considered that the application was an order, had forwarded the same to the competent authority. This factor was considered by the revisional authority and thus accepted the contention of the Secretary that it was forwarded to the authority with the bona fide belief that the applicant was eligible. In our opinion, the explanation offered by the Secretary had been accepted and the punishment of dismissal

was set aside. A similar explanation offered by the appellant should have been accepted and consequently, the punishment of dismissal should have been set aside in toto, rather modifying the same into one of reversion. To this extent, the appellant would be entitled to claim that he alone has been discriminated. That apart, the fact remains that though the application was forwarded by the appellant, it has been further considered by the Secretary who in turn forwarded the same to the competent authority and the competent authority has also sanctioned the loan. In these circumstances, we are inclined to accept the submission of Mr.S.Venkataraman, the learned counsel. Accordingly, the writ appeal is allowed and the impugned order is set aside. Consequently, the punishment of reversion is also set aside. The appellant shall not be entitled for salary for the period of dismissal and the said period will be treated for continuation of service of all other purposes. We are informed that the appellant had retired from service in the year 2007 and the respondents are directed to make available all the monetary benefits to which the appellant is entitled to pursuant to this order within a period of three months. With these observations, the writ appeal is allowed. No costs."

4. Petitioner reached the age of superannuation, on 30/4/2007. Petitioner therefore, prayed for the retiral benefits, which he is entitled to, consequent to the order, dated 12/7/2011. Since, the same was denied by the order impugned, instant writ petition has been filed, praying for the relief, as stated supra.

5. Respondents have filed a counter. Nothing has been stated in the counter as to why the petitioner is not entitled to the retiral benefits which he was entitled to as Assistant Secretary to the Co-operative Society.

6. Heard Mr.Balan Haridas, learned counsel for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-operative Society) for the respondents.

7. The Hon'ble Division Bench has set aside the order of punishment, reverting the petitioner to the post of Supervisor, from the post of Assistant Secretary, vide, order, dated 12/7/2011, made in W.A.No.1233 of 2010. What has been denied is only the salary, during the period of dismissal. The period of dismissal was to be treated towards continuation of service. Reasons given by the respondent in the order, rejecting the representation of the petitioner denying him the benefits payable to the Assistant Secretary, is unsustainable

in law. Petitioner has given the retiral benefits as if he was retired, as Supervisor. This in fact, amounts to willful disobedience of the order of Division Bench, dated 12/7/2011, quoted supra.

8. In view of the above finding, Writ Petition succeeds. Petitioner is entitled to the benefits which he would be received as Assistant Secretary from the date of retirement. Respondents are directed to calculate the same in the light of the decision taken by the Hon'ble Division Bench, dated 12/7/2011, and pass orders, within a period of twelve weeks, from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Joint Registrar of Co-operative Society
Vellore Zone
Vellore.
2. The Management
Nemmili Co-operative Primary Agricultural
and Rural Development Bank Limited
Nemmili
Arakonam Taluk
Vellore District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No. 89051

+1cc to Mr.Balan Haridas, Advocate, S.R.No. 88577

+1cc to the Government Pleader, S.R.No. 89620

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PP(CO)

GN(17/12/2019)